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STATUTORY INSTRUMENTS

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**2013 No. 3244**

The Ashton Vale to Temple Meads and  
Bristol City Centre Rapid Transit Order 2013

PART 1

PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Ashton Vale to Temple Meads and Bristol City Centre Rapid Transit Order 2013 and comes into force on 9th January 2014.

**Interpretation**

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1984 Act” means the Road Traffic Regulation Act 1984(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 1992 Act” means the Transport and Works Act 1992;

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised guided busway” means any guided busway authorised by this Order;

“the authorised works” means the scheduled works and any other works authorised by this Order;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection, or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“cycle track” has the same meaning as in the 1980 Act;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

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(1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) 1980 c. 66.  
(4) 1984 c. 27.  
(5) 1990 c. 8.  
(6) 1991 c.22

- (b) by other means but while in electronic form;
- “footway” has the same meaning as in the 1980 Act;
- “guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than 8 passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992<sup>(7)</sup>;
- “harbour railway premises” means any premises of the promoter used for, or in connection with, the operation or maintenance of the harbour railway system including any depot, test track, building, site and any harbour railway vehicle;
- “the harbour railway system” means the Bristol Harbour Railway as modified under this Order and any apparatus or facilities used for its operation and other associated authorised works;
- “harbour railway vehicle” means any train using the harbour railway system;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the limits of deviation” means the limits of deviation for the scheduled works shown on the works and land plans;
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” is to be construed accordingly;
- “the Order limits” means the permanent limits and the temporary limits;
- “the Order plans” means the plans certified by the Secretary of State as the Order plans for the purposes of this Order;
- “owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981<sup>(8)</sup>;
- “parking place” has the same meaning as in section 32 of the 1984 Act;
- “the permanent limits” means the limits of deviation and of land to be acquired or used and the limits of additional land to be acquired or used, as shown on the works and land plans, described in the book of reference and (in the case of the additional land) specified in columns (1) and (2) of Schedule 2 (additional land which may be acquired or used);
- “the promoter” means Bristol City Council and North Somerset Council together or either of them;
- “rapid transit premises” means any premises of the promoter used for, or in connection with, the operation or maintenance of the rapid transit system, including any depot, test busway, building, park and ride site and any rapid transit vehicle;
- “the rapid transit system” means the authorised guided busway and any apparatus or facilities used for its operation and other associated authorised works;
- “rapid transit vehicle” means any vehicle lawfully using the rapid transit system;
- “the relevant part of the Floating Harbour” means so much of the Floating Harbour as is within the Order limits;
- “the relevant part of the River” means so much of the River Avon (New Cut) as is within the Order limits;
- “the rights of way plans” means the rights of way plans included in the Order plans;
- “the scheduled works” means the works specified in Schedule 1 (scheduled works), or any part of them;
- “the sections” means the sections shown in the Order plans;
- “street” includes part of a street;

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(7) S.I. 1992/3231. As amended by S.I. 1997/1951.

(8) 1981 c. 67.

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the temporary limits” means the limits of land to be used temporarily as shown on the works and land plans, described in the book of reference and specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken);

“the transport systems” means the rapid transit system and the harbour railway system together or either of them;

“the tribunal” means the Upper Tribunal;

“watercourse” includes all docks, rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer or drain; and

“the works and land plans” means the works and land plans included in the Order plans.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air space over its surface.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) References in this Order to points identified by letters, with or without numbers, or by numbers, are to be construed as references to the points so marked on the Order plans.

(5) All distances, directions, lengths, points and areas stated in the description of the scheduled works or in any description of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

### **Application of enactments relating to railways**

**3.—**(1) The provisions of the Railway Regulation Acts 1840 to 1893<sup>(9)</sup> do not apply in relation to the harbour railway system.

(2) The provisions of the Highway (Railway Crossings) Act 1839<sup>(10)</sup> do not apply in relation to harbour railway system.

### **Application of the 1991 Act**

**4.—**(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts) or section 184 of that Act (vehicle crossings).

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major transport works by virtue of paragraph (1), to be construed as references to the promoter.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56 (directions as to timing);

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<sup>(9)</sup> 1840 c. 97, 1842 c. 55, 1868 c. 119, 1873 c. 48 and 1889 c. 57.

<sup>(10)</sup> 1839 c. 45.

section 56A (power to give directions as to placing of apparatus);  
 section 58 (restrictions following substantial road works);  
 section 58A (restriction on works following substantial streetworks);  
 section 73A (power to require undertaker to re-surface street);  
 section 73B (power to specify timing etc. of re-surfacing);  
 section 73C (materials, workmanship and standard of re-surfacing);  
 section 78A (contributions to costs of re-surfacing by undertaker); and  
 Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by the promoter under the powers conferred by article 11 (temporary stopping up of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act referred to in paragraph (4) are—  
 section 54 (advance notice of certain works), subject to paragraph (6);  
 section 55 (notice of starting date of works), subject to paragraph (6);  
 section 57 (notice of emergency works);  
 section 59 (general duty of street authority to co-ordinate works);  
 section 60 (general duty of undertakers to co-operate);  
 section 68 (facilities to be afforded to street authority);  
 section 69 (works likely to affect other apparatus in the street);  
 section 75 (inspection fees);  
 section 76 (liability for cost of temporary traffic regulation); and  
 section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 13 (construction and maintenance of new, altered or diverted streets)—  
 (a) affects the operation of section 87 of the 1991 Act (prospectively maintainable highways), and the promoter is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or  
 (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

(8) To such extent as is reasonably necessary for protecting the transport systems on any street and their operation and use the promoter has the same powers as respects reinstatement as a street authority has under section 72 of the 1991 Act.

(9) The rapid transit system is to be treated as a tramway for the purposes of Part 3 of the 1991 Act and accordingly the provisions of that Part (relating to tramway undertakings and tramways) as modified by this article apply to the transport systems.

(10) In its application to the transport systems section 93(3) of the 1991 Act (works affecting level crossings or tramways) also permits the promoter to make reasonable requirements—

- (a) for allowing it facilities to monitor the execution of the works; and
- (b) for the protection of the transport systems.

## PART 2 WORKS PROVISIONS

### *Principal powers*

#### **Power to construct and maintain works**

5.—(1) The promoter may construct and maintain either Work No. 1A or Work No. 1B (but not both) together with the remainder of the scheduled works.

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), the promoter may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) stations, depots, platforms, junctions and stopping places;
- (b) buildings and other works required for, or in connection with, the control, management or maintenance of the transport systems or the control or management of any vehicular and pedestrian traffic on or in the transport systems;
- (c) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (d) works for the strengthening, alteration or demolition of any building;
- (e) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (h) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (6), the promoter may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(5) The promoter may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

- (a) within the Order limits; or
- (b) within the boundaries of any street along which the construction of any part of the transport systems is shown on the works and land plans, or which has a junction with such a street.

(7) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority but such consent must not be unreasonably withheld.

(8) The promoter may in constructing or maintaining any part of the harbour railway system which is laid along a street lay down such number of switches and crossings as may be necessary or expedient.

### **Power to deviate**

- 6.—(1) In constructing or maintaining any of the scheduled works, the promoter may—
- (a) deviate laterally from the lines or situations shown on the works and land plans within the Order limits relating to that work shown on those plans; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) to any extent not exceeding 3 metres upwards; and
    - (ii) to any extent downwards as may be necessary or expedient.
- (2) The promoter may construct and maintain any emergency and maintenance track comprised in a scheduled work at a different level to the guided busway which it adjoins.
- (3) The promoter may, in constructing and maintaining any part of the authorised guided busway provide within the limits of deviation such gaps in the mode of guidance adopted and such number of ways, cross-overs, lay-bys, bus parking areas and sidings as may be necessary or expedient.
- (4) Without limitation on the scope of paragraph (1)—
- (a) in constructing and maintaining Work Nos. 1A, 1B and 2 the promoter may, to the extent it thinks fit, deviate from the design of the bridges shown on the sections, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of any land underneath the bridges; and
  - (b) in constructing and maintaining the scheduled works the promoter may, to the extent it thinks fit, deviate laterally from their points of commencement and termination shown on the works and land plans.

### *Streets*

### **Power to alter layout, etc., of streets**

7.—(1) The promoter may alter the layout of, and carry out other ancillary works in, any street specified in column (1) of Part 1 or Part 2 of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2) of Part 1 or Part 2 of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by article 5 (power to construct and maintain works) or paragraph (1) but subject to paragraph (3), the promoter may, for the purpose of constructing, maintaining or using the transport systems, alter the layout of a street within the permanent limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, the promoter may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) replace or alter the surface or surface treatment of the street;
- (d) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for rapid transit vehicles or harbour railway vehicles or by carrying out other works for that purpose;
- (e) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;

- (f) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999<sup>(11)</sup> and which are carried out in compliance with those regulations;
- (g) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than rapid transit vehicles or harbour railway vehicles from passing along the transport systems; and
- (h) make and maintain crossovers, sidings or passing places.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

### **Power to keep apparatus in streets**

**8.—**(1) The promoter may, for the purposes of or in connection with the construction, maintenance and use of the transport systems, place and maintain in any street in which the transport systems are constructed or which has a junction with such a street any work, equipment or apparatus including, without limitation on the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

(2) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority, but such consent must not be unreasonably withheld.

(3) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) of the Electricity Act 1989<sup>(12)</sup>; and
- (c) the reference to any work, equipment or apparatus in a street includes a reference to any work, equipment or apparatus under, over, along or upon the street.

### **Power to execute street works**

**9.—**(1) The promoter may, for the purpose of exercising the powers conferred by article 8 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street in which the transport systems are constructed or which has a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without limitation on the scope of that power, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street.

(2) This article is subject to paragraph 3 of Schedule 9 (provisions relating to statutory undertakers, etc.).

(3) The powers conferred by this article must not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street in which the construction of the transport systems is shown on the works and land plans without the consent of the street authority, but such consent must not be unreasonably withheld.

### **Construction of new and stopping up of existing streets**

**10.—**(1) The promoter may in connection with the authorised works construct the new streets specified in column (2) of Part 3 of Schedule 4 (streets to be stopped up and the provision of substitutes) by reference to the letters and numbers shown on the rights of way plans.

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(11) S.I. 1999/1026.

(12) 1989 c. 29.

(2) Subject to the provisions of this article, the promoter may, in connection with the construction of the authorised works, stop up each of the streets specified in column (1) of Part 1 and Part 2 of Schedule 4 to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (2) of Part 1 and Part 2 of that Schedule.

(3) No street specified in column (1) of Part 1 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in relation to it in column (3) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as previously used the street to be stopped up is first provided and then maintained by the promoter, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up, until the completion and opening of the new street in accordance with sub-paragraph (a).

(4) No street specified in column (1) of Part 2 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless one of the conditions specified in paragraph (5) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(5) The conditions referred to in paragraph (4) are that—

- (a) the promoter is in possession of the land;
- (b) there is no right of access to the land from the street concerned;
- (c) there is reasonably convenient access to the land otherwise than from the street concerned; and
- (d) the owners and occupiers of the land have agreed to the stopping up.

(6) Where a street has been stopped up under this article—

- (a) all rights of way over or along it are extinguished; and
- (b) the promoter may appropriate and use for the purposes of its transport systems undertakings so much of the site of the street as is bounded on both sides by land owned or appropriated by the promoter.

(7) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to be paid compensation by the promoter to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) This article is subject to paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.).

### **Temporary stopping up of streets**

**11.**—(1) The promoter may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), the promoter may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The promoter must provide at all times reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.



(4) Without limitation on the scope of paragraph (1), the promoter may exercise the powers conferred by this article in relation to the streets specified in—

- (a) column (1) of Parts 1 and 2 of Schedule 4 (streets to be stopped up and the provision of substitutes); and
- (b) column (1) of Schedule 5 (streets to be temporarily stopped up),

to the extent specified in relation to each street, by reference to the letters and numbers shown on the works and land plans, as set out in column (2) of Parts 1 and 2 of Schedule 4, and Schedule 5.

(5) The promoter must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Access to works**

**12.** The promoter may, for the purposes of the construction, operation or maintenance of the authorised works, form and lay out such means of access, or improve such existing means of access, at such locations within the Order limits as the promoter reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

### **Construction and maintenance of new, altered or diverted streets**

**13.—(1)** Any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed between the promoter and the highway authority, must be maintained by and at the expense of the promoter for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the promoter for a period of 12 months from its completion and after the expiry of that period by and at the expense of the street authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a street over the transport systems or carrying the transport systems over a street and except as provided in those paragraphs the promoter is not liable to maintain the surface of any street in, on, under or over which the scheduled works are constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority.

(4) In any action against the promoter in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the promoter had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street, including its use for the transport systems, and the traffic which was reasonably to be expected to use it;

- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
  - (c) the state of repair in which a reasonable person would have expected to find the street;
  - (d) whether the promoter knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
  - (e) where the promoter could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,
- but for the purposes of such a defence it is not relevant to prove that the promoter had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the promoter had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

#### **Agreements with street authorities**

- 14.**—(1) A street authority and the promoter may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under the transport systems) under the powers conferred by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of any street along or across which the transport systems are operating, or of the structure of any bridge or tunnel carrying a street over or under the transport systems;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (e) the execution in the street of any of the works referred to in article 9 (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Guided busway highway crossings**

**15.**—(1) Where by virtue of the creation of a highway or other road after the day on which application was made for this Order the authorised guided busway would cross the highway or road the promoter may construct the authorised guided busway so as to enable vehicles upon it to cross on the level the highway or road.

(2) Any traffic sign placed under the powers conferred by article 39 (traffic signs) on or near a highway or other road to which the public has access is to be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(3) The highway authority and the promoter may enter into agreements with respect to the construction and maintenance of any new busway crossing; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(4) In this article “new busway crossing” means the place at which the authorised guided busway crosses a highway or other road on the level under the powers conferred by this article.

### *Supplemental powers*

#### **Temporary closure of and works in waterways**

**16.—(1)** The promoter may, in connection with the construction of Work Nos. 3, 5A and 7, temporarily—

- (a) interfere with the relevant part of the River or the relevant part of the Floating Harbour by constructing or maintaining caissons, cofferdams or such other temporary works as the promoter considers necessary or expedient;
- (b) moor or anchor barges or other vessels or craft in the relevant part of the River or the relevant part of the Floating Harbour, and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials;
- (c) close to navigation the relevant part of the River or the relevant part of the Floating Harbour; and
- (d) remove the water from the relevant part of the River or the relevant part of the Floating Harbour that is so interfered with or closed.

(2) During the period of any closure referred to in paragraph (1)(c), all rights of navigation and other rights relating to, and any obligations of the navigation authority to manage, any part of the relevant part of the River or the relevant part of the Floating Harbour that has been closed are suspended and unenforceable against the navigation authority.

(3) The powers conferred by paragraph (1) may only be exercised in a way which secures—

- (a) that no more of the relevant part of the River or the relevant part of the Floating Harbour is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the River or the relevant part of the Floating Harbour or both becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) In exercising the powers conferred by paragraph (1) in relation to the relevant part of the River or the relevant part of the Floating Harbour or both the promoter must—

- (a) take such reasonable steps as are necessary to ensure that—
  - (i) the flow of water in the River Avon (New Cut) or the Floating Harbour or both, as the case may be, is maintained unaltered; and
  - (ii) the functioning of any intake or discharge along the River Avon (New Cut) or the Floating Harbour or both is unaffected; and
- (b) without affecting sub-paragraph (a), keep any interference with water levels or flows to the minimum reasonably necessary to construct the works.

(5) Any person who suffers loss or damage as the result of—

- (a) the suspension of any private right of navigation under this article; or
- (b) any effect of the exercise of the powers conferred by paragraph (1) on the functioning of any intake or discharge along the relevant waterway,

is entitled to be paid compensation for such loss or damage by the promoter, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

## Discharge of water

17.—(1) The promoter may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, or in any street along which the transport systems are authorised to operate, make openings into, and connections with, the watercourse, sewer or drain.

(2) Any dispute arising from the exercise of the power under paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(13)</sup>.

(3) The promoter must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

(4) The promoter must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The promoter must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The promoter must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010<sup>(14)</sup>.

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a harbour authority within the meaning of the Harbours Act 1964<sup>(15)</sup>; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

## Safeguarding works to buildings

18.—(1) Subject to the following provisions of this article, the promoter may at its own expense and from time to time carry out such safeguarding works to any building lying within the safeguarding limits as the promoter considers to be necessary or expedient.

(2) Safeguarding works may be carried out—

(a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works (other than works authorised by this article); or

(b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the promoter may enter and survey any building falling within paragraph (1) and any land within its curtilage.

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<sup>(13)</sup> 1991 c. 56.

<sup>(14)</sup> S.I. 2010/675.

<sup>(15)</sup> 1964 c. 40.

(4) For the purpose of carrying out safeguarding works under this article to a building the promoter may—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out safeguarding works to a building;
- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the promoter must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the safeguarding works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the safeguarding works or to enter the building or land to be referred to arbitration under article 67 (arbitration).

(7) The promoter must compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) safeguarding works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use, it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the promoter must compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 66 (no double recovery), nothing in this article relieves the promoter from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “safeguarding works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
  - (iii) any works the purpose of which is to secure the safe operation of the transport systems or to prevent or minimise the risk of such operation being disrupted; and

- (b) “safeguarding limits” means the limits of land for safeguarding works shown on the works and land plans.

### **Planning permission**

**19.**—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

(2) For the purpose of section 262(1) of the 1990 Act (meaning of “statutory undertakers”) the rapid transit system is to be regarded as a road transport undertaking.

### **Power to survey and investigate land, etc.**

**20.**—(1) The promoter may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits or the safeguarding limits, any street along which the transport systems are authorised to be constructed and any street having a junction with such a street;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as the promoter thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
- (e) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (d); and
- (f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).

(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the promoter—

- (a) must, if so required, before or after entering the land produce written evidence of that person’s authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The promoter must pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Nothing in this article overrides the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(16).

### **Mode of construction and operation of the harbour railway system**

**21.**—(1) Where the harbour railway system is constructed along a street or in any place to which the public has access (including any place to which the public has access only on making a payment), the promoter must take such care as in all the circumstances is reasonable to ensure that the authorised tramway is constructed and maintained so that the street or other place is safe for other users.

(2) When considering what measures are required under paragraph (1) the promoter must have particular regard to the character and usage of the street or other place and to those who could reasonably be expected to use it.

(3) Where the harbour railway system has been constructed in a street, works by any person which affect or are likely to affect the promoter's obligations under paragraph (1), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 8 (power to keep apparatus in streets), must not be carried out without the consent of the promoter, which may be given subject to such reasonable terms and conditions as the promoter may require but must not be unreasonably withheld.

### **Obstruction of construction of authorised works**

**22.** Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the promoter in setting out the lines of the scheduled works, or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the promoter,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **PART 3**

### **ACQUISITION AND POSSESSION OF LAND**

#### *Powers of acquisition*

#### **Power to acquire land**

**23.**—(1) Subject to paragraph (2) the promoter may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits as may be required for the authorised works and may use any land so acquired for those purposes or for any other purposes that are ancillary to its transport systems undertakings.

(2) The promoter may exercise powers under this article and article 26 (power to acquire new rights) in respect of either—

- (a) any or all of the land comprised in plots numbered 01A/01, 01A/02, 01A/03, 01A/04, 01A/05, 01A/06, 01A/07, 01A/08, 01A/09, 01A/11, 01A/12, 01A/13, 01A/14, 02A/01, 02A/04, 04A/01, 04A/04, 04A/05, 04A/06, 04A/07, 04A/08 and 04A/09 on the works and land plans (“land required for Work No. 1A”); or
- (b) any or all of the land comprised in plots numbered 01B/01, 01B/02, 01B/03, 01B/04, 01B/05, 01B/06, 01B/07, 01B/08, 01B/09, 01B/10, 01B/11, 01B/12, 02B/01, 04B/01, 04B/04, 04B/05, 04B/06, 04B/07, 04B/08 and 04B/09 on the works and land plans (“land required for Work No. 1B”),

but must not acquire land required for Work No. 1A and land required for Work No. 1B.

### **Application of Part 1 of the 1965 Act**

**24.**—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981<sup>(17)</sup> applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied, has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**25.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981<sup>(18)</sup> applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 24 (application of Part 1 of the 1965 Act).

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<sup>(17)</sup> 1981 c. 67.

<sup>(18)</sup> 1981 c. 66.



### **Power to acquire new rights**

26.—(1) Subject to article 23(2) (power to acquire land) the promoter may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) the promoter is not required to acquire a greater interest in that land.

(3) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right.

### **Rights under or over streets**

27.—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or air space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air space for those purposes or any other purpose ancillary to the transport systems.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the promoter acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting on to the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker, to whom section 85 of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

### *Temporary possession of land*

### **Temporary use of land for construction of works**

28.—(1) The promoter may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

- (i) so much of the land shown on the works and land plans as lying within the temporary limits for the purpose specified in relation to that land in column (3) of Schedule 7 (land of which temporary possession may be taken) relating to the scheduled works (or any of them) specified in column (4) of that Schedule; and
- (ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

- (b) remove any buildings and vegetation from that land; and
  - (c) construct temporary works (including the provision of means of access) and buildings on the land.
- (2) Not less than 14 days before exercising the powers of paragraph (1) the promoter must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The promoter may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—
- (a) in the case of land lying within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
  - (b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the promoter has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the promoter is not required to replace a building removed under this article.
- (5) The promoter is not required to reinstate plot numbers 01A/10, 02A/02 or 02A/03 following the completion of Work No. 1A.
- (6) The promoter must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Without affecting article 66 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).

### **Temporary use of land for maintenance of works**

- 29.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the promoter may—
- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
  - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the promoter to take temporary possession of—
- (a) any house or garden belonging to a house; or

- (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the promoter must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The promoter may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The promoter must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Without affecting article 66 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the promoter takes possession of land under this article, the promoter is not required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 24(1) (application of Part 1 of the 1965 Act).
- (11) In this article, "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use.

### *Compensation*

#### **Disregard of certain interests and improvements**

**30.**—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### **Set-off for enhancement in value of retained land**

**31.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 26 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

### *Supplementary*

#### **Acquisition of part of certain properties**

**32.**—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 24 (application of Part 1 of the 1965 Act)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the promoter a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question of whether the owner must be required to sell only the land subject to the notice to treat is, unless the promoter agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the promoter is authorised to acquire compulsorily under this Order.

(8) If the promoter agrees to take the land subject to the counter-notice, or if the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the promoter is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the promoter may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay to the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the promoter must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Extinguishment or suspension of private rights of way**

**33.—**(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the promoter, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the promoter under section 11(1) of the 1965 Act, whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by the promoter which is within the permanent limits and is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order are suspended and unenforceable for as long as the promoter remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) applies.

(6) Paragraphs (1), (2) and (3) have effect subject to—

(a) any notice given by the promoter before the completion of the acquisition of the land, the promoter's appropriation of it, the promoter's entry onto it or the promoter's taking

temporary possession of it, as the case may be, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

- (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the promoter and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Open space**

**34.**—(1) The Open Space Land is not, by reason of the exercise of powers under this Order, to vest in the promoter until the promoter has acquired the Exchange Land and, upon a request made by the promoter, North Somerset Council has certified that a scheme for the provision of the Exchange Land as open space has been implemented to its satisfaction.

(2) Upon the requirements of paragraph (1) being satisfied, the Exchange Land will vest in North Somerset Council subject to the like rights, trusts and incidents as attached to the Open Space Land and, on the vesting of the Exchange Land, the Open Space Land will be discharged from all rights, trusts and incidents to which it was previously subject.

(3) In this article—

- (a) “Exchange Land” means the land in North Somerset shown numbered 01A/01, 01B/01, 02A/01 and 02B/01 on the works and land plans; and
- (b) “Open Space Land” means either—
  - (i) if Work No. 1A is constructed, the land in North Somerset shown numbered 01A/09 and the land in the City of Bristol shown numbered 01A/11, 01A/12, 01A/13, 01A/14, 02A/04 and 04A/01 on the works and land plans; or
  - (ii) if Work No. 1B is constructed, the land in North Somerset shown numbered 01B/09 and 01B/10 and the land in the City of Bristol shown numbered 01B/11, 01B/12 and 04B/01, on the works and land plans.

(4) Section 19 of the Acquisition of Land Act 1981 has effect in relation to any open space within the meaning of subsection (4) of that section as if in paragraph (1)(a) of that section the words “the persons in whom the land purchased was vested” were substituted by the words “the local authority in whose area that land is situated”.

### **Time limit for exercise of powers of acquisition**

**35.**—(1) After the end of the time limit—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 24 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied to this Order by article 25 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 28 (temporary use of land for construction of works) will cease at the end of the period mentioned in paragraph (1), but nothing in this paragraph prevents the promoter from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(3) In this article “the time limit” means—

- (a) In relation to land comprised in plots numbered 09/03, 09/08 to 09/11 and 09/22, the period of 2 years beginning with the day on which this Order comes into force; and
- (b) In all other cases, the period of 5 years beginning with the day on which this Order comes into force.

## PART 4

### OPERATION OF THE TRANSPORT SYSTEMS

#### Power to operate and use transport systems

**36.**—(1) The promoter may operate and use the rapid transit system as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) The promoter may operate and use the harbour railway system for the carriage of passengers and goods.

(3) Subject to paragraph (5) and article 45 (powers of disposal, agreements for operation, etc.), the promoter has, for the purpose of operating the rapid transit system, the exclusive right to use the authorised guided busway and any apparatus or facilities used for operation of the rapid transit system and to permit others to do so on such terms as it considers appropriate.

(4) Any person who, without the consent of the promoter or other reasonable excuse, uses the apparatus mentioned in paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Nothing in this article restricts the exercise of any public right of way over any part of a street in which apparatus is situated in pursuance of the provisions of this Order except to the extent that the exercise of the right is constrained by the presence of the apparatus.

#### Power to charge fares

**37.**—(1) The promoter may demand, take and recover or waive such charges for carrying passengers or goods on the transport systems, or for any other services or facilities provided in connection with the transport systems, as it thinks fit.

(2) The promoter may enter into and carry into effect agreements with other persons providing public passenger transport services with regard to the issue of tickets and the making of through ticketing arrangements or for the purpose of generally co-ordinating the provision of those services with the operation of the transport systems.

(3) In this article, “public passenger transport service” has the meaning given by section 63(10) (a) of the Transport Act 1985<sup>(19)</sup>.

#### Removal of obstructions

**38.**—(1) If any obstruction is caused to rapid transit vehicles or harbour railway vehicles by a vehicle waiting, loading, unloading or breaking down on any part of the transport systems, the person in charge of the vehicle must immediately remove it; and if that person fails to do so the promoter may take all reasonable steps to remove the obstruction and may recover the expenses reasonably incurred in doing so from—

- (a) any person by whom the vehicle was put or left so as to become an obstruction to rapid transit vehicles or harbour railway vehicles using the transport systems; or

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<sup>(19)</sup> 1985 c. 67.

(b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in or aware of the vehicle being so put or left.

(2) If any obstruction is caused to rapid transit vehicles or harbour railway vehicles by a load falling on the transport systems from a vehicle, the person in charge of the vehicle must remove the load immediately from the transport systems; and if that person fails to do so, the promoter may take all reasonable steps to remove the load and may recover the expenses reasonably incurred in doing so from—

- (a) any person who was in charge of the vehicle at the time when the load fell from it; or
- (b) any person who was the owner of the vehicle at that time unless that person shows that, at that time, the person was not concerned in, or aware of, the vehicle being in the place at which the load fell from it.

(3) For the purposes of this article the owner of a vehicle is taken to be the person by whom the vehicle is kept; and in determining for those purposes who was the owner of the vehicle at any time, it will be presumed (unless the contrary appears) that the owner was the person in whose name the vehicle was at that time registered under the Vehicles Excise and Registration Act 1994(20).

(4) A person who, wilfully and without lawful excuse—

- (a) interferes with or removes the transport systems or any part of the them or the works connected with them;
- (b) places or throws materials or objects of any kind on any part of the transport systems; or
- (c) does anything which obstructs any rapid transit vehicle or harbour railway vehicle using the transport systems, whether or not such obstruction endangers the lives of any person in that vehicle,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Traffic signs**

**39.**—(1) The promoter may, for the purposes of, or in connection with the construction or operation of the transport systems, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) (general provisions as to traffic signs) of the 1984 Act or of a character authorised by the Secretary of State on any street in which the transport systems are to operate or which gives access to such a street, or on any street in connection with any instrument made under article 40 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) The promoter—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to the promoter as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street in which the transport



systems are operating or which gives access to such a street must consult with the promoter as to the placing of any traffic sign which would affect the operation of the transport systems.

(5) Rapid transit vehicles and harbour railway vehicles are taken to be public service vehicles for the purposes of section 122(2)(c) (exercise of functions by local authorities) of the 1984 Act.

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

### **Traffic regulation**

**40.**—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the promoter may, for the purposes of the transport systems—

- (a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 8 (traffic regulation) on those roads specified in column (2) and along the lengths and between the points specified in columns (1) and (3) of that Part of that Schedule;
- (b) permit or prohibit vehicular access in the manner specified in Part 2 of Schedule 8 to those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in columns (1) and (3) of that Part of that Schedule;
- (c) create new bus lanes in the manner specified in Part 3 of Schedule 8 on those roads specified in column (2) and along the lengths, between the points and as respects direction to the extent specified in columns (1) and (3) and for the uses specified in column (4) of that Part of that Schedule; and
- (d) revoke any traffic regulation order under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by the undertaker under this paragraph.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent must not be unreasonably withheld, the promoter may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the transport systems—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the promoter.

(3) The powers in paragraphs (1) and (2) may be exercised at any time prior to the expiry of 12 months from the opening of the transport systems for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraphs (1) or (2) may have effect both before and after the expiry of that period.

(4) The promoter must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (5).

(5) The promoter must not exercise the powers conferred by paragraph (1) or (2) unless it has—

- (a) given not less than—

- (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention to do so in the case of a prohibition, restriction or other provision intended to have effect temporarily,
- to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a) (i), or within 7 days of its receipt of notice of the promoter's intention in the case of sub-paragraph (a)(ii).
- (6) Any prohibition, restriction or other provision made by the promoter under paragraph (1) or (2)—
- (a) has effect as if duly made by, as the case may be—
    - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
    - (ii) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 8) to which the prohibition, restriction or other provision is subject; and
  - (b) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(21) (road traffic contraventions subject to civil enforcement).
- (7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the promoter from time to time by subsequent exercise of the powers of paragraph (2) within a period of 24 months from the opening of the transport systems for public use.
- (8) Before exercising the powers of paragraph (2) the promoter must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.
- (9) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.
- (10) The powers conferred on the promoter by this article with respect to any road have effect subject to any agreement entered into by the promoter with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

### **Power to lop trees overhanging transport systems**

- 41.**—(1) The promoter may fell or lop any tree or shrub near any part of the transport systems, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—
- (a) from obstructing or interfering with the construction, maintenance or operation of the transport systems or any apparatus used for the purposes of the transport systems; or
  - (b) from constituting a danger to passengers or other persons using the transport systems.
- (2) In exercising the powers conferred by paragraph (1), the promoter must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

### **Trespass on the transport systems**

**42.**—(1) Any person who—

- (a) trespasses on any part of the transport systems which are not situated in a street; or
- (b) trespasses on any land of the promoter in dangerous proximity to the transport systems or to any electrical or other apparatus used for or in connection with the operation of the transport systems,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) No person is to be convicted of an offence under this article unless it is shown that a notice warning the public not to trespass upon the transport systems was clearly exhibited and maintained at the stop on the transport systems nearest the place where the offence is alleged to have been committed.

### **Power to make byelaws**

**43.**—(1) The promoter may make byelaws regulating—

- (a) the use and operation of, and travel on, the transport systems;
- (b) the maintenance of safety and order on the transport systems, on any street along which the transport systems are to operate and on rapid transit system premises, harbour railway premises or other facilities provided in connection with the transport systems, where necessary to ensure the safe operation and use of the transport systems; and
- (c) the conduct of all persons, including employees of the promoter, while on rapid transit premises or harbour railway premises, or which could affect the safe operation and use of the transport systems.

(2) Without limitation on the scope of paragraph (1), byelaws made under this article may make provision—

- (a) with respect to tickets issued for travel on the transport systems (in whatever form), the payment of fares and charges and the evasion of payment of fares and charges;
- (b) with respect to interference with, or obstruction of, the operation of the transport systems or other facilities provided in connection with the transport systems;
- (c) with respect to access to, and the carriage, use or consumption of anything on, rapid transit premises or harbour railway premises;
- (d) with respect to the prevention of nuisances on rapid transit premises or harbour railway premises;
- (e) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within rapid transit premises or harbour railway premises;
- (f) for the safe custody and re-delivery or disposal of any property accidentally left on rapid transit premises or harbour railway premises and for fixing the charges made in respect of any such property; and
- (g) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the transport systems or on rapid transit premises or harbour railway premises.

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Without affecting the taking of proceedings for an offence included in byelaws by virtue of paragraph (3), if the contravention of, or failure to comply with, any byelaw made under this article is attended with danger or annoyance to the public, or hindrance to the promoter in the operation of the transport systems, the promoter may immediately take action to obviate or remove the danger, annoyance or hindrance.

(5) Byelaws made under this article do not come into operation until they have been confirmed by the Secretary of State.

(6) At least 28 days before applying for any byelaws to be confirmed under this article, the promoter must publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the times during which a copy of the byelaws will be open to public inspection; and any person affected by any of the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(7) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws must—

- (a) be kept at the principal office of the promoter and must be open to public inspection without payment at all reasonable hours, and
- (b) be made available on the promoter's website (if any).

(8) The promoter must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the promoter may determine.

(9) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws are to come into operation; and if no date is so fixed the byelaws come into operation after the expiry of 28 days after the date on which they were confirmed.

(10) The Secretary of State may charge the promoter such fees in respect of any byelaws submitted for confirmation under this article as the Secretary of State may consider appropriate for the purposes of defraying any administrative expenses incurred in connection with the confirmation of those byelaws.

(11) A copy of any byelaws when confirmed must be printed and deposited at the principal office of the promoter and must be open to public inspection without payment at all reasonable hours, and the promoter must, at the request of any person, supply that person with a copy of any such byelaws on payment of such reasonable sum as the promoter determines.

(12) The production of a printed copy of any byelaws made under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the promoter stating—

- (a) that the byelaws were made by the promoter;
- (b) that the copy is a true copy of the byelaws;
- (c) that on a specified date the byelaws were confirmed by the Secretary of State; and
- (d) the date when the byelaws came into operation,

is rebuttable evidence of the facts stated in the certificate.

### **Power to contract for police services**

**44.—**(1) The promoter may enter into any agreement with a police authority and its chief officer for the police force maintained by that authority to provide policing services for or in connection with the transport systems, including at any rapid transit premises or harbour railway premises.

(2) Any such agreement may provide for—

- (a) the promoter to make such payment or other consideration for those policing services as the parties may agree; and
  - (b) such incidental and ancillary matters as the parties consider appropriate.
- (3) In this article—
- (a) “chief officer” means a chief officer of police within the meaning of the Police Act 1996<sup>(22)</sup> or the Chief Constable of the British Transport Police Force; and
  - (b) “police authority” means a police authority within the meaning of that Act or the British Transport Police Authority within the meaning of the Railways and Transport Safety Act 2003<sup>(23)</sup>.

**Powers of disposal, agreements for operation, etc.**

- 45.—(1) The promoter may, with the consent of the Secretary of State, enter into agreements—
- (a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; or
  - (b) to grant to another person (“the lessee”) for a period agreed between the promoter and the lessee any interest of the promoter in the authorised works or the promoter’s right to construct, maintain, use or operate the authorised works; and
  - (c) that are connected with or consequential on any agreement entered into under subparagraph (a) or (b).
- (2) Any agreement referred to in paragraph (1) may provide—
- (a) for any matters that are connected with the matters referred to in that paragraph or are consequential on them;
  - (b) for the financing or defraying of, or the making of contributions by the promoter or by any other person towards, the cost of constructing, maintaining, using or operating the authorised works; and
  - (c) for the transferee, the lessee or any other person to exercise, enjoy or be responsible for any related functions of the promoter, including its functions comprised in this Order, either exclusively or concurrently with the promoter or any other person.
- (3) Where an agreement has been made under paragraph (1), references in this Order to the promoter include references to the transferee, the lessee or any other person who may exercise, enjoy or be responsible for any related functions of the promoter under that agreement.
- (4) The exercise of the powers conferred by any enactment by any person in pursuance of any agreement made under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the promoter.
- (5) The promoter may provide to any person in any agreement made under paragraph (1), or in connection with or in consequence of any such agreement, or otherwise in connection with the design, construction, financing, maintenance, use or operation of the authorised works, such guarantees, indemnities or other forms of security as it considers to be necessary or appropriate.
- (6) In this article—
- (a) “functions” means statutory and other powers, duties, rights, interests and obligations; and
  - (b) references to the authorised works include references to any land held in connection with the authorised works.

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<sup>(22)</sup> 1996 c. 16.

<sup>(23)</sup> 2003 c. 20.

### **Application of landlord and tenant law**

**46.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the transport systems or the right to operate the same; and
- (b) any agreement entered into by the promoter with any person for the construction, maintenance, use or operation of the transport systems, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants affects the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Registration of busway services and substitute road services**

**47.—**(1) The promoter may provide, or secure the provision by other persons of, services for the carriage of passengers by road (“substitute services”) where the rapid transit system has been curtailed, discontinued or temporarily interrupted.

(2) The route, frequency and stopping places of any substitute service need not correspond with the route of the interrupted, curtailed or discontinued service.

(3) Section 6 of the Transport Act 1985(24) does not apply to any substitute services.

(4) For the purposes of the application of Part 1 of the Transport Act 1985, but subject to paragraphs (1) to (3), the authorised guided busway is a road within the meaning of section 137(1) of that Act.

## **PART 5**

### **PENALTY FARES**

#### **Interpretation of Part 5**

**48.—**(1) In this Part, unless the context otherwise requires—

“authorised person” means, in relation to any purpose, a person authorised for that purpose by the promoter;

“fare ticket” means a ticket authorising the person in respect of whom it is issued to travel on a rapid transit vehicle;

“general travel authority” means any permit, other than a fare ticket, authorising the person in respect of whom it is issued to travel on a rapid transit vehicle;

“passenger” means a person travelling on a rapid transit vehicle;

“penalty fare” means a penalty fare payable under article 50 (penalty fares);

“the penalty fare provisions” means articles 50 (penalty fares) to 55 (exclusion of double liability); and

“rapid transit vehicle stop” means a station or other regular stopping place on the rapid transit system at which passengers may get on or off rapid transit vehicles.

(2) Any reference in this Part to a passenger producing a fare ticket or general travel authority on being required to do so by an authorised person is a reference to producing, when so required, a fare ticket or general travel authority which, either by itself or together with any other document produced by the passenger at the same time, is valid for the journey made by the passenger.

(3) For the purposes of paragraph (2), a passenger who is on a rapid transit vehicle is taken to have made a journey ending at the next scheduled rapid transit stop.

### **Operation of Part 5**

**49.**—(1) The penalty fare provisions have effect in relation to travel on any rapid transit vehicle on and after such day as the Secretary of State may specify.

(2) On the application of the promoter, or if the Secretary of State considers on reasonable grounds that the promoter is not complying with the requirements of this Part, the Secretary of State may provide that the penalty fare provisions cease to have effect on and after such day as the Secretary of State may specify.

(3) Paragraph (2) does not affect the power of the Secretary of State to specify further days on and after which the penalty fare provisions are to have effect.

(4) Any day specified by the Secretary of State for the purposes of paragraph (1) or (2) must be published in a newspaper circulating in the promoter’s area not later than one week before that date.

(5) No day may be specified under paragraph (1) except at the request of the promoter.

### **Penalty fares**

**50.**—(1) If a passenger, on being required to do so by an authorised person, fails to produce a fare ticket or a general travel authority, the passenger is liable to pay a penalty fare if required to do so by an authorised person.

(2) A passenger is not liable to pay a penalty fare if, at any time when fare tickets are generally made available for sale at rapid transit stops or on rapid transit vehicles, there were no facilities for the sale of the necessary ticket for the passenger’s journey at the rapid transit stop where, and the time when, the passenger boarded the rapid transit vehicle, or on the rapid transit vehicle.

(3) Paragraphs (4) and (5) have effect with respect to the burden of proof, in any action for the recovery of a penalty fare under this article, so far as concerns the question whether the facts of the case fall within paragraph (2).

(4) In any case where the passenger has provided the authorised person with a relevant statement in due time it is for the authorised person to show that the facts of the case do not fall within paragraph (2), and in any other case it is for the passenger to show that the facts of the case fall within that provision.

(5) For the purposes of paragraph (4)—

(a) a relevant statement is a statement giving an explanation of the passenger’s failure to produce a fare ticket or general travel authority, together with any information as to the

passenger's journey relevant to that explanation (including, in every case, an indication of the rapid transit stop where the passenger boarded the rapid transit vehicle); and

- (b) a statement is provided in due time if it is provided when the passenger is required to produce a fare ticket or general travel authority, or at any later time before the expiration of the period of 21 days beginning with the day following the day on which the journey is completed.

### **Amount of penalty fare**

**51.**—(1) Subject to paragraph (2), the penalty fare is £20 and is payable to the promoter before the expiration of the period of 21 days beginning with the day following the day on which the journey in respect of which it is payable is completed.

- (2) The promoter may from time to time vary the amount of the penalty fare provided that—
  - (a) the consent of the Secretary of State is obtained in writing to such a variation; and
  - (b) a notice stating the amount of the penalty fare as so varied is published in a newspaper circulating in the promoter's area not later than 28 days before the day on which the penalty fare, as so varied, is to take effect.

### **Document to be issued in connection with penalty fare requirement**

**52.**—(1) An authorised person who requires a passenger to pay a penalty fare must give the passenger either a receipt for the payment of the amount of the penalty (where the passenger makes that payment to the authorised person) or a notice stating that the requirement has been made.

(2) A receipt or notice given under paragraph (1) must specify the passenger's destination on the rapid transit vehicle on which the passenger is travelling when required to pay the penalty fare, and must operate as an authority to the passenger to continue to that destination.

(3) For the purposes of paragraph (2), the passenger's destination is (unless only one destination is possible in the circumstances) taken to be the destination stated by the passenger or, in default of any statement by the passenger identifying the passenger's destination, such destination as may be specified by the authorised person.

### **Notice of penalty fare provisions**

**53.**—(1) It is the duty of the promoter to secure that a warning notice meeting the requirements of paragraph (2) is posted—

- (a) at every rapid transit stop, in such a position as to be readily visible to prospective passengers; and
- (b) in every rapid transit vehicle, in such a position as to be readily visible to passengers travelling on that rapid transit vehicle.

(2) A warning notice posted under paragraph (1) must (however expressed) indicate the circumstances (as provided in article 50 (penalty fares)) in which passengers may be liable to pay a penalty fare and state the amount of the penalty fare.

### **Supplementary provisions**

**54.**—(1) Where a passenger is required to pay a penalty fare, unless that passenger pays it immediately and in cash when asked for it by an authorised person, that passenger must, if required to do so by an authorised person, give that authorised person, the name and address of the passenger; and any passenger failing to do so will be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.



(2) Where an authorised person requires any passenger to do anything under any provision of this Order the authorised person must, if so requested by the passenger concerned, produce to that passenger a duly authenticated document showing evidence of the authorised person's authority; and a requirement by an authorised person is of no effect if, as respects that requirement, the authorised person fails to comply with this paragraph.

### **Exclusion of double liability**

**55.**—(1) Where a passenger has become liable to pay a penalty fare in respect of any journey (referred to below as “the relevant journey”), no proceedings may be brought against that passenger for either of the offences specified in paragraph (2) before the end of the period mentioned in article 51(1) (amount of penalty fare); and no such proceedings may be brought after the end of that period if—

- (a) the passenger has paid the penalty fare to the promoter before the end of that period; or
- (b) an action has been brought against the passenger for the recovery of that fare.

(2) The offences mentioned in paragraph (1) are—

- (a) any offence under byelaws made under article 43 (power to make byelaws) involving a failure to obtain or produce a fare ticket or general travel authority for the relevant journey; and
- (b) any offence under section 25(3) (regulation of conduct of passengers) of the Public Passenger Vehicles Act 1981<sup>(25)</sup> of contravening or failing to comply with any provision of regulations for the time being having effect by virtue of that section by failing to pay the fare properly payable for the relevant journey or any part of it.

(3) If proceedings are brought against any such passenger for any offence specified in paragraph (2) the liability to pay the penalty fare ceases and, if it has been paid, the promoter is liable to repay to the passenger an amount equal to the amount of that fare.

## **PART 6**

### **PROTECTIVE PROVISIONS**

#### **Statutory undertakers, etc.**

**56.** The provisions of Schedule 9 (provisions relating to statutory undertakers, etc.) have effect.

#### **Minerals**

**57.** Nothing in this Order affects the right of any person entitled to any mine or minerals of any description whatsoever under a street along which the transport systems are laid to work the mine or get the minerals; but this does not affect any liability (whether civil or criminal) of the person so entitled in respect of damage to the transport systems resulting from the exercise of any such right.

#### **Saving for highway authorities**

**58.** Nothing in this Order affects any power of a highway authority to widen, alter, divert or improve any highway along which the authorised transport systems are constructed.

### **For protection of electricity, gas, water and sewerage undertakers**

**59.** The provisions of Schedule 10 (for protection of electricity, gas, water and sewerage undertakers) have effect.

### **For protection of railway interests**

**60.** The provisions of Schedule 11 (for protection of railway interests) have effect.

## **PART 7**

### **MISCELLANEOUS AND GENERAL**

#### **Application of enactments**

**61.**—(1) Any local enactment which makes provision in relation to any railway or former railway within the Order limits, including the Bristol Dock Act 1897(**26**) and the Great Western Railway (Bristol Lines) Act 1897(**27**), has effect subject to the provisions of this Order.

(2) Regardless of any local enactment which makes provision in relation to Prince Street Bridge or Ashton Avenue Bridge, neither bridge, except in the case of emergency, is to be swung open between 7.15am and 9.15am or 4.00pm and 6.00pm Mondays to Fridays and outside those times may be swung open no more than once per hour if in the opinion of the harbour authority this is reasonably required.

(3) Notwithstanding anything contained in section 12 of the Inclosure Act 1857(**28**) or the Commons Act 2006(**29**) or anything done (whether before or after the making of this Order) under Part 1 of, or Schedule 2 to, that Act, the promoter may exercise the powers conferred on it by this Order.

#### **Disclosure of confidential information**

**62.** A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 18 (safeguarding works to buildings) or article 20 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained under paragraph (a) and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

#### **Defence to proceedings in respect of statutory nuisance**

**63.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**30**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as

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(26) 1897 60 & 61 Vict. c. ciii.

(27) 1897 60 & 61 Vict. c. cxci.

(28) 1857 c. 31.

(29) 2006 c. 26.

(30) 1990 c. 43.

to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974<sup>(31)</sup>; or
  - (b) that the nuisance is a consequence of the operation or maintenance of the transport systems and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
  - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

do not apply where the consent relates to the use of premises by the promoter for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

- (3) The provisions of this article do not affect any rule of common law having similar effect.

#### **Certification of plans, etc.**

**64.** The promoter must, as soon as practicable after the making of this Order, submit copies of the book of reference and the Order plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and the Order plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **Service of notices**

**65.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(32)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

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<sup>(31)</sup> 1974 c. 40.

<sup>(32)</sup> 1978 c. 30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

### **No double recovery**

**66.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

### **Arbitration**

**67.** Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

*Martin Woods*  
Head of the Transport and Works Act Orders  
Unit  
Department for Transport

19th December 2013