
STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 2

WORKS PROVISIONS

Supplemental powers

Attachment of equipment to buildings

19. The promoter may affix to any building for the time being constructed on any land at the NG²; Development Site Spine Road specified in Schedule 6 (land not to be acquired compulsorily), or on any land specified in Schedule 8 (acquisition of new rights only)—

- (a) any brackets, cables, wires, insulators and other apparatus required in connection with the construction, operation or maintenance of the authorised tramway; and
- (b) any lamps, cameras, brackets, pipes, electric lines and other apparatus required for the provision of additional or substitute street lighting or closed circuit television in consequence of the construction, operation or maintenance of the authorised tramway.

Temporary closure of, and works in, waterways

20.—(1) The promoter may, in connection with the construction of Work No.7 or Work No.12—

- (a) temporarily interfere with the relevant part of the canal or, as the case may be, the relevant part of the river by constructing or maintaining caissons, cofferdams or other temporary works at any point within that part of the canal or river as the promoter considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant part of the canal or, as the case may be, the relevant part of the river, and may load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials in connection with the construction of Work No.7 or Work No.12;
- (c) on grounds of health and safety only, temporarily close to navigation the relevant part of the canal or, as the case may be, the relevant part of the river; and
- (d) temporarily remove the water from the relevant part of the canal or, as the case may be, the relevant part of the river 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 British Waterways Board to manage, the relevant part of the river or the relevant part of the canal so closed shall be suspended and unenforceable against the British Waterways Board.

(3) The power conferred by paragraph (1) shall be exercised in a way which secures—

- (a) that no more of the relevant part of the river or the relevant part of the canal 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 canal 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 canal the promoter shall—
 - (a) take such reasonable steps as are necessary to ensure that—
 - (i) the flow of water in the canal is maintained unaltered; and
 - (ii) the functioning of any intake or discharge along the canal 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 canal,

shall be 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.

Discharge of water

21.—(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 authorised street tramway is authorised to be laid, 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 shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1).

(3) The promoter shall 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 shall not be unreasonably withheld.

- (4) The promoter shall 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 shall not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The promoter shall 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 shall 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) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(2).

- (8) In this article—

(1) 1991 c. 56.
(2) 1991 c. 57.

- (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(3); 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

22.—(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 Order 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.

(4) For the purpose of carrying out safeguarding works under this article to a building the promoter may (subject to paragraphs (5) and (6))—

- (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 shall, 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 82 (arbitration).

(7) The promoter shall 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 shall compensate the owners and occupiers of the building for any damage sustained by them.

(9) Without affecting article 81 (no double recovery), nothing in this article shall relieve 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) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “safeguarding works”, in relation to a building, means—

- (a) 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;
- (b) 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
- (c) any works the purpose of which is to secure the safe operation of the authorised tramway or to prevent or minimise the risk of such operation being disrupted.

Power to construct temporary street tramway

23.—(1) The promoter may, if it considers it necessary or expedient in consequence of any works executed or proposed to be executed in a street along which the authorised street tramway is constructed—

- (a) remove or discontinue the operation of the authorised street tramway; and
- (b) lay, maintain and operate in that street or in a street near to that street a temporary street tramway in place of the authorised street tramway.

(2) The powers conferred by this article may only be exercised with the consent of the street authority but such consent shall not be unreasonably withheld.

(3) The provisions of articles 8(2) (power to alter layout, etc., of streets), 9 (power to keep apparatus in streets), 10 (power to execute street works) and 49 (traffic signs) shall apply in relation to temporary street tramways laid under this article as they apply in relation to the authorised street tramway.

Planning permission: supplementary matters

24.—(1) Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall 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) In relation to the application of paragraph (3)(c) of the Second Schedule of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Tree Preservation Order) Regulations 1969(4) (including that paragraph as applied by regulation 3(ii) of the Town and Country Planning (Tree Preservation Order) (Amendment) and (Trees in Conservation Areas) (Exempted Cases) Regulations 1975(5), or as incorporated in any tree preservation order), any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation

(4) S.I. 1969/17.

(5) S.I. 1975/148.

to the works authorised by this Order shall be treated as deeming the permission to have been granted on application made under Part 3 of that Act for the purposes of that Part.

(3) In relation to the application of article 5(1)(d) of the Form of Tree Preservation Order set out in the Schedule to the Town and Country Planning (Trees) Regulations 1999⁽⁶⁾ as incorporated in any tree preservation order or as having effect by virtue of regulation 10(1)(a) of those Regulations, any direction under section 90(2A) of the 1990 Act deeming planning permission to be granted in relation to the works authorised by this Order shall not be treated as an outline planning permission.

Power to survey and investigate land, etc.

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

- (a) survey or investigate any land within the Order limits, any street along which the authorised street tramway is authorised to be laid and any street having a junction with such a street;
- (b) without limiting 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 limiting 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) shall, 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 shall 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 shall not be unreasonably withheld.

(5) The promoter shall 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 shall remove the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽⁷⁾.

⁽⁶⁾ S.I. 1999/1892.

⁽⁷⁾ 1979 c. 46.

Mode of construction and operation of authorised tramway

26.—(1) The authorised tramway shall be operated by electricity or, in an emergency or for the purposes of maintenance, by diesel power or other means.

(2) The authorised street tramway and the authorised tramroad shall be constructed to a nominal gauge of 1,435 millimetres.

(3) Where the authorised tramway 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 shall 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.

(4) When considering what measures are required under paragraph (3) the promoter shall 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.

(5) Where the authorised street tramway has been constructed in a street, works by any person which affect or are likely to affect the promoter's obligations under paragraph (3), including works to any street surfaces and works affecting any equipment or apparatus placed in the street under article 9 (power to keep apparatus in streets), shall 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 impose but shall not be unreasonably withheld.

Obstruction of construction of authorised works

27. 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,

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

Removal of human remains

28.—(1) In this article “the specified land” means the land at Styring Street, Chilwell Road and Gregory Street numbered 262, 263, 278, 283, 297, 301, 657, 661, 662, 663, 664 and 665 on the works and land plans.

(2) Before the promoter begins to use any part of the specified land for the construction of any of the authorised works in the specified land, the promoter shall remove, or cause to be removed, from that part of the specified land, all human remains in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the promoter shall give notice of such intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing it once in each of two successive weeks in a newspaper circulating in the County of Nottinghamshire; and
- (b) displaying it in a conspicuous place upon or near to the specified land.

(4) As soon as reasonably possible after the first publication of a notice under paragraph (3) the promoter shall send a copy of the notice to Nottinghamshire Archives, County House, Castle Meadow Road, Nottingham NG2 1AG.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the promoter of that person's intention to undertake the removal of such remains, and on the giving of such notice, if such remains can be identified, that person shall be at liberty to cause such remains to be removed and reinterred in any burial ground or cemetery in which burials may legally take place, or to be removed to, and cremated in, any crematorium, and as soon as reasonably possible after such reinterment or cremation shall provide to the promoter a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the promoter is not satisfied that any person giving such notice is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court shall have power to make an order specifying who shall remove the remains and as to the payment of the costs of the application.

(7) The promoter shall pay the reasonable expenses of the removal and reinterment or cremation of such remains.

(8) If—

- (a) within the said period of 56 days no notice under paragraph (5) has been given to the promoter in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days thereafter; or
- (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the promoter, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (9) the promoter shall remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the promoter thinks suitable for the purpose and so far as possible remains from individual graves shall be reinterred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the promoter is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, and that the remains in question can be identified, but the person does not remove the remains, the promoter shall comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(10) Upon the reinterment or cremation of any remains under this article—

- (a) a certificate of reinterment or cremation shall be sent to the Registrar General by the promoter giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and
- (b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) shall be sent by the promoter to the address mentioned in paragraph (4).

(11) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or power conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 of the Burial Act 1857(8) shall not apply to a removal carried out in accordance with this article.

Status: *This is the original version (as it was originally made).*
