
STATUTORY INSTRUMENTS

2009 No. 1300

The Nottingham Express Transit System Order 2009

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

5.—(1) The promoter may construct and maintain 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 (7), 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) works required for, or in connection with, the control of any vehicular and pedestrian traffic on the authorised tramway;
- (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 (7), 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 pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(6) Where the promoter lays down conduits for the accommodation of cables or other apparatus for the purposes of or associated with the authorised works it may provide in, or in connection with, such conduits, accommodation for the apparatus of any other person, and manholes and other facilities for access to such accommodation, and may permit the use of such conduits and facilities on such terms and conditions as may be agreed between it and such other person.

- (7) Paragraphs (3) and (4) shall 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 a street tramway is shown on the works and land plans, or which has a junction with such a street.

(8) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority but such consent shall not be unreasonably withheld.

(9) Section 109 of the Water Resources Act 1991⁽¹⁾, section 23 of the Land Drainage Act 1991⁽²⁾ and any byelaws made under those Acts shall not apply to anything done under or in pursuance of this Order.

(10) Section 6 of the Ecclesiastical Jurisdiction Measure 1963⁽³⁾, section 7 of the Faculty Jurisdiction Measure 1964⁽⁴⁾ and Part 3 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991⁽⁵⁾ shall not apply to anything done under or in pursuance of this Order in relation to Work No.16A and the land numbered 1169 on the works and land plans.

(11) The scheduled works may be constructed and maintained under the powers of this article regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act or Part 1 of, or Schedule 2 to, the Commons Act 2006⁽⁶⁾.

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) In constructing or maintaining any work or part of a work shown on the works and land plans as being situated in a street and for which no limits of deviation are shown on those plans, the promoter may deviate laterally within the boundaries of that street.

- (3) The promoter may, in constructing or maintaining the authorised tramway, lay down—
- (a) double lines of rails in place of single lines;
 - (b) single lines of rails in place of double lines;
 - (c) interlacing lines of rails in place of double or single lines; or
 - (d) double or single lines of rails in place of interlacing lines.

(4) The power in paragraph (3) shall not be exercised in the case of the authorised street tramway without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The promoter may in constructing or maintaining the authorised street tramway lay down such number of switches and crossings as may be necessary or expedient.

(1) 1991 c. 57.
 (2) 1991 c. 59.
 (3) 1963 No.1.
 (4) 1964 No.5.
 (5) 1991 No.1.
 (6) 2006 c. 26.

(6) The promoter may in constructing and maintaining the authorised tramroad provide within the limits of deviation for the tramroad such number of lines of rails and sidings, switchings and crossings as may be necessary or expedient.

(7) Without limiting the scope of paragraph (1)—

- (a) in constructing and maintaining Works Nos. 3, 5, 6, 6A, 10, 10A, 10B, 12, 15 and 15A 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.

Designation of works

7.—(1) Regardless of anything in the description of the scheduled works contained in Schedule 1 (scheduled works)—

- (a) the whole or any part of the authorised street tramway may be constructed within the limits of deviation for that work off-street as a tramroad, and so far as it is so constructed shall be treated for the purposes of this Order as if it were so designated; and
- (b) the whole or any part of the authorised tramroad may be constructed within the limits of deviation for that work along a street as a street tramway, and so far as it is constructed shall be treated for the purposes of this Order as if it were so designated.

(2) Where, by means of the creation or extinguishment of rights of way, any part of the authorised tramway which has been constructed as a tramroad becomes a street tramway, or any part which was constructed as a street tramway becomes a tramroad, it shall be treated for the purposes of this Order as if it were so designated.

Streets

Power to alter layout, etc., of streets

8.—(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 limiting 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 any authorised street tramway, alter the layout of the street along which the authorised street tramway is or is to be laid and the layout of any street having a junction with such a street; and, without limiting 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) reduce the width of the carriageway of the street by forming a reserved area in the street as a stopping place for tramcars or by carrying out other works for that purpose;
- (d) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys;

- (e) carry out traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999(7) and which are carried out in compliance with those Regulations;
- (f) carry out works to the carriageway of the street for the purpose of deterring or preventing vehicles other than tramcars from passing along the authorised street tramway; and
- (g) make and maintain crossovers, sidings or passing places.

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

Power to keep apparatus in streets

9.—(1) The promoter may, for the purposes of or in connection with the construction, maintenance and use of the authorised tramway, place and maintain in any street in which the tramway is or is to be laid or in any street having a junction with such a street any work, equipment or apparatus including, without limiting the scope of that power, foundations, platforms, road islands, substations, electric lines and any electrical or other apparatus.

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

(3) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act; and
- (b) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

Power to execute street works

10.—(1) The promoter may, for the purpose of exercising the powers conferred by article 9 (power to keep apparatus in streets) or any other provision of this Order, enter upon any street in which the authorised tramway is or is to be laid and any street having a junction with such a street and may execute any works required for or incidental to the exercise of those powers including, without limiting 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) The powers of this article shall not be exercised within the boundaries of a street outside of the Order limits which has a junction with a street along which the construction of a street tramway is shown on the works and land plans without the consent of the street authority, but such consent shall not be unreasonably withheld.

Stopping up of streets and extinguishment of rights

11.—(1) 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 Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the works and land plans or the traffic regulation and rights of way plans, in column (2) of that Schedule.

(2) No street specified in column (1) of Part 1 or Part 2 of Schedule 4 (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless either—

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works or other works in column (3) of those Parts 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 is reasonably likely to have used the street to be stopped up is first provided and thereafter 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).

(3) No street specified in column (1) of Part 3 or Part 4 of Schedule 4 (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

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

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

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

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

(7) This article is subject to paragraph 2 of Schedule 11 (provisions relating to statutory undertakers, etc.).

Temporary stopping up of streets

12.—(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 limiting the scope of paragraph (1), the promoter may use any street stopped up under the powers of this article as a temporary working site.

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

(4) Without limiting the scope of paragraph (1), the promoter may exercise the powers of this article in relation to the streets specified in column (1) of Schedule 4 (streets to be permanently stopped up) to the extent specified, by reference to the letters and numbers shown on the works and

land plans or the traffic regulation and rights of way plans and set out in column (2) of that Schedule, and in relation to the streets specified in Schedule 5 (streets to be temporarily stopped up).

(5) The promoter shall not exercise the powers of 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 shall not be unreasonably withheld.

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

Access to works

13. 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 shall not be unreasonably withheld.

Construction and maintenance of new, altered or diverted streets

14.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed between the promoter and the highway authority, 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 highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, 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 or tunnel carrying a street over a tramroad or carrying a tramroad over a street and except as provided in those paragraphs the promoter shall not be liable to maintain the surface of any street in, on, under or over which the scheduled works shall be 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 shall be a defence (without affecting 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 shall in particular have regard to the following matters—

- (a) the character of the street including its use for a tramway, 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; and

(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 that the promoter had arranged for a competent person to carry out or supervise the maintenance of that 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.

Construction of bridges and tunnels

15. Any bridge or tunnel to be constructed under this Order for carrying a highway over or under the authorised tramroad shall be constructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Restoration of streets if street tramway discontinued

16. If the promoter abandons the construction of, or permanently ceases to operate any of, the authorised street tramways (“the discontinued tramway”), it shall as soon as reasonably practicable and unless otherwise agreed with the street authority—

- (a) remove from any street in which the discontinued tramway is laid the rails and any other works, equipment and apparatus which have become redundant; and
- (b) restore, to the reasonable satisfaction of the street authority, the portion of the street along which the discontinued tramway was laid, or redundant works, equipment and apparatus were laid, regard being had to—
 - (i) the condition of the street before the tramway was laid; and
 - (ii) the nature of the traffic using the street at the time of the discontinuance.

Agreements with street authorities

17.—(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 authorised tramroad) 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 a street tramway is laid, or of the structure of any bridge or tunnel carrying a street over or under the authorised street tramway or the authorised tramroad;
 - (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 10 (power to execute street works).
- (2) Such an agreement may, without limiting 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.

New road crossings

18.—(1) Where by virtue of the creation of a highway or other road after the day on which application was made for this Order under section 6 of the Transport and Works Act 1992⁽⁸⁾, the authorised tramroad would cross that highway or road, then the promoter may construct the tramroad so as to carry it on the level across the highway or road.

(2) The promoter may provide, maintain and operate at or near any new road crossing such protective equipment as the Office of Rail Regulation may in writing approve.

(3) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the 1984 Act as having been placed as provided by that Act.

(4) Without limiting the scope of article 8 (power to alter layout, etc., of streets), the promoter may in the exercise of the powers conferred by this article alter the level of any highway or road referred to in paragraph (1).

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

(6) In this article—

“new road crossing” means the place at which the authorised tramroad crosses a highway or other road on the level under the powers conferred by this article; and

“protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the 1984 Act), manual, mechanical, automatic, electrical or telephonic equipment or other devices.

*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;

(8) 1992 c. 42. As amended by S.I. 1995/1541, 1998/2226, 2003/3199 and 2006/958.

- (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(9).

(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

(9) 1991 c. 56.

(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(10).

(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(11); 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.

(10) 1991 c. 57.

(11) 1964 c. 40.

(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⁽¹²⁾ (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⁽¹³⁾, 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 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⁽¹⁴⁾ 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.

⁽¹²⁾ S.I. 1969/17.

⁽¹³⁾ S.I. 1975/148.

⁽¹⁴⁾ S.I. 1999/1892.

(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(15).

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—

(15) 1979 c. 46.

- (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(**16**) shall not apply to a removal carried out in accordance with this article.