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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 2**

**WORKS PROVISIONS**

*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(1).

(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(2).

- (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(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.

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(1) 1991 c. 56.  
(2) S.I. 2010/675.  
(3) 1964 c. 40.

## **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.

(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(4).

### **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.