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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 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<sup>(1)</sup> and the Great Western Railway (Bristol Lines) Act 1897<sup>(2)</sup>, 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<sup>(3)</sup> or the Commons Act 2006<sup>(4)</sup> 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<sup>(5)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance

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(1) 1897 60 & 61 Vict. c. ciii.  
(2) 1897 60 & 61 Vict. c. cxci.  
(3) 1857 c. 31.  
(4) 2006 c. 26.  
(5) 1990 c. 43.

falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as 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>(6)</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>(7)</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>(6)</sup> 1974 c. 40.

<sup>(7)</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.