

TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

THE ASHTON VALE TO TEMPLE MEADS AND BRISTOL CITY CENTRE RAPID TRANSIT ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Ashton Vale to Temple Meads and Bristol City Centre Rapid Transit Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

The Order is promoted by Bristol City Council and North Somerset Council (together referred to as “the promoter”) to permit the promoter to construct and operate works and to acquire compulsorily land and rights in land for the purpose of a rapid transit system between Ashton Vale and Bristol City Centre via Temple Meads and associated works to the existing Bristol Harbour Railway. The rapid transit system would consist of a guided busway running from the Park and Ride site at Long Ashton, through Ashton Vale, crossing the River Avon via Ashton Avenue Bridge and running (inbound) alongside Cumberland Road before crossing Prince Street Bridge and then, running on-street, completing an anti-clockwise loop around Bristol city centre via Temple Meads, Cabot Circus and Broadmead. The Bristol Harbour Railway would be relaid along a similar alignment to its current one to share the inbound guideway alongside Cumberland Road, and realigned as tramway to accommodate the rapid transit system in the area behind the proposed Museum of Bristol which is intended to be open to general traffic. Powers are sought in the Order for the guided busway system between Long Ashton Park and Ride and Prince Street Bridge (“the rapid transit system”), the realignment of the Bristol Harbour Railway and ancillary matters, but not for the city centre loop.

The Order is based on the Model Clauses for Tramways contained in Schedule 2 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006/1954) (“the model clauses”) but occasionally departs from those clauses and follows previous precedent orders including the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120) (“the Merseytram Order”), the Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523) (“the Cambridgeshire Order”) and the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (“the NET Order”). Where there is such a departure from the model clauses, an explanation is provided below. In addition the model clauses have been adapted as necessary for them to apply to a guided busway scheme.

PART 1
PRELIMINARY

Part 1 of the Order contains preliminary provisions.

Article 1 (Citation and commencement) provides for the commencement and citation of the Order.

Article 2 (Interpretation) provides for the interpretation of the Order. Amongst other things, this article defines the Order limits as being the permanent limits and the temporary limits. The permanent limits are defined as being the limits of deviation and the limits of land to be acquired or used including the additional land to be acquired or used as set out in *Schedule 2 (additional land which may be acquired or used)* and the temporary limits are defined as the limits of land to be used temporarily as set out in *Schedule 7 (land of which temporary possession may be taken)*.

This is slightly different to the approach used in the model clauses but provides for greater clarity elsewhere in the Order (by allowing a reference to permanent limits, temporary limits or Order limits as appropriate, rather than a long-winded reference to each of the relevant articles and Schedules) in relation to the area in which the functions under the Order are to be exercised. For example, land acquisition powers under article 23 apply to land within permanent limits, temporary use powers under article 28 apply to land within temporary limits (and within permanent limits in a slightly different manner) and access powers under article 12 apply to land within Order limits. This approach has precedent in a number of Orders including the NET Order.

Article 3 (Application of enactments relating to railways) makes provision, for the purposes of the Order, about various railway enactments. Unlike the model clauses, this article does not apply provisions of the Railways Clauses Consolidation Act 1845 (1845 c.20) (“the 1845 Act”) as those provisions are not required for the particular subject matter of this Order (applying only to the proposed realignment of the Bristol Harbour Railway rather than the guided busway) and/or express provision is generally made elsewhere in the draft Order in relation to the matters that these provisions cover. As regards those sections of the 1845 Act that would be applied by the model clauses:—

Section	Comment
46	This provision is not considered relevant given the nature of the realigned Bristol Harbour Railway which consists of a segregated tramroad (which does not cross a highway on the level) and street tramways.
58	This is covered by Part 3 of the 1991 Act.
61	As above, this provision is not considered relevant.

Section	Comment
68	As above, these provisions are not considered appropriate given nature of the realigned Bristol Harbour Railway, which runs either on-street or along a segregated corridor between the Avon New Cut and the carriageway of Cumberland Road. To the extent that provisions are relevant, they would be covered by <i>article 10 (construction of new and stopping up of existing streets)</i> and <i>article 11 (temporary stopping up of streets)</i> .
71	This is dealt with by way of the protective provisions for the benefit of specific third parties and by way of the compulsory purchase regime more generally.
72 and 73	As above.
75	Given the nature of the realigned Bristol Harbour Railway, the utility of such a provision would not be great. To the extent such matters are required, provision can be made by way of byelaws.
77	This is covered by <i>article 57 (minerals)</i> .
78 to 85E	Given the area in which the authorised tram system is to run (urban fringe and river corridor), mining activities would seem unlikely, and such extensive provision as in ss.78 to 85E is therefore considered to be unnecessary. Rather, the provisions in article 57 contain sufficient protection by protecting other parties' rights to mines and minerals whilst preserving liability for damage to the authorised tram system.

In addition, this article provides that the Bristol Harbour Railway as realigned by the Order should be treated as tramway for the purposes of the Railways Act 1993. This is to avoid any doubt about the legal status of the realigned Bristol Harbour Railway in its off-street sections and to ensure that a consistent regulatory regime applies across the whole of its length. Because of the on-street sections it is considered that the regime applying to tramways is the most appropriate one.

Article 4 (Application of 1991 Act) provides for the application of the New Roads and Street Works Act 1991 (1991 c.22). In addition to the model clauses, as well as providing that certain provisions of that Act *will* apply to the works executed under the powers of the Order, it also provides that certain provisions *will not* apply. These provisions are set out in a list in paragraph (3). Further paragraph (8) makes provision for the promoter to have the same powers with respect to the reinstatement of streets as the street authority has under section 72 of the 1991 Act and paragraph (10) makes provision for the promoter to monitor the execution of works and for the protection of the rapid transit system and Bristol Harbour Railway. Other additions to the model clauses are the inclusion of section 75 (inspection fees) within the scope of the provisions of the 1991 Act that will apply and, at paragraph (2), a provision allowing the promoter to be treated in the same way as a highway authority in relation to major transport works.

These provisions are relatively standard in complex projects of this type where significant works are required within the public highway (see, for example, the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905) (“the Stratford Order”) and the NET Order and are considered to be necessary in these particular circumstances. In addition paragraph (9) provides for the rapid transit system and Bristol Harbour Railway to be treated as tramway for the purposes of the 1991 Act thereby conferring on the promoter certain benefits granted to tramway undertakers. This approach has precedent in article 3 of the Cambridgeshire Order.

PART 2

WORKS PROVISIONS

Part 2 of the Order contains provisions for, and relating to, the construction of works.

Article 5 (Power to construct and maintain works) would authorise the construction and maintenance of the principal works proposed (“the scheduled works”), which are described in *Schedule 1 (scheduled works)* and shown on the plans and sections deposited in connection with the application. *Schedule 1* describes works for the purpose of the guided busway running between Long Ashton Park and Ride and Prince Street Bridge, the realignment of the Bristol Harbour Railway, which for the purposes of the Order is treated as a tramway, and ancillary works. *Article 5* also provides for the construction and maintenance works necessary and expedient for the purposes of the scheduled works and identifies such works. In identifying such works, the article also makes certain provision not included in the model clauses by providing for the promoter to construct other works including:

- stations, platforms and the like;
- buildings and other works required for the management or maintenance of the authorised guided busway or tramway;
- works required for strengthening, improving, maintaining or reconstructing any street; and
- works for the strengthening, alteration or demolition of any building.

In addition, unlike the model clauses, *article 5(5)* provides for the removal of temporary works constructed by the promoter for the purposes of the authorised works. Such provisions can be found in the NET Order (article 5) and are useful to allow the promoters to construct the authorised guided busway and tramway adequately and economically.

Article 5(1) also departs from the model clauses and allows the promoter to construct either Work no. 1A or Work no.1B but not both. This is to ensure that the rapid transit system can be constructed on an appropriate, viable route whether or not the proposed new Bristol City Football Club stadium is constructed. Work no. 1A has been designed to accommodate the proposed new stadium on the Ashton Fields site near the Long Ashton Park and Ride site. At the time of preparing the application for the Order it was not yet certain that the new stadium development

would proceed. Paragraph (1) ensures that if the new stadium development does not proceed (and therefore work no. 1A is not the most appropriate route for the guided busway) the rapid transit project will have the necessary powers to construct an appropriate route (work no. 1B) in the absence of the stadium. This principle is also applied to powers under the Order for the compulsory acquisition of land required for the rapid transit system.

In addition, *article 5(9)* is a variance from the model clauses. This allows the promoter to construct and maintain the scheduled works regardless of anything done pursuant to Part 1 of the Commons Act 2006. Part 1 of that Act makes provision, amongst other things, for the registration of land as a town or village green for a period of up to two years following the cessation of such a use. At the time of preparing this application an application for the registration of a town green at Ashton Fields was awaiting determination. Precedent for this provision can be found in the NET Order (*article 35(6)*). A similar principle is applied to the powers under the Order for the compulsory acquisition of land.

Article 6 (Power to deviate) provides for the limits within which the promoter can deviate in the construction of the proposed works. In addition to the model clauses paragraph (4) provides for lateral deviation of the start and end points of the scheduled works as shown on the Order plans and, in respect of certain intended bridges, to deviate from designs shown on the Order plans. These provisions are required by the specific nature of this project in order to provide for sufficient flexibility in the construction of the authorised works. They have a precedent in the NET Order (*article 6*).

Article 6(3) also provides for the provision of such gaps in guidance (which may be necessary for technical reasons, such as the radius of corners or the strength of existing bridges, or for traffic management reasons, such as junctions with highways) as might be expedient in constructing and maintaining the authorised guided busway. This provision has a precedent in the Cambridgeshire Order (*article 5*).

Article 7 (Power to alter layout, etc., of streets) would permit the promoter to alter the layout of streets in order to accommodate the introduction of the rapid transit system or the realigned Bristol Harbour Railway as tramway, with the consent of the street authority (not to be unreasonably withheld) or, in the case of the alterations in respect of certain streets detailed in *Schedule 3* to the Order, without further reference to the street authority. In addition to the powers in the model clauses, this article provides for (i) the altering of the width of any kerb, footway, cycle track or verge within the relevant streets and (ii) the carrying out of works for the provision or alteration of parking places, loading bays, bus stop clearways, cycle tracks and bus laybys or traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999 and which are carried out in compliance with those regulations. Because the rapid transit system often affects streets without the authorised guided busway being laid along those streets (for example, along Cumberland Road where outbound rapid transit vehicles will be using the highway rather than the busway) the powers of this article relate to streets within the permanent limits rather than (as in the model clauses) streets along which a tramway is laid. These provisions are required in order adequately to

construct the authorised works within the street environment and have precedent in article 6 of the Cambridgeshire Order.

Article 8 (Power to keep apparatus in streets) would permit the promoter to place and maintain equipment and apparatus in streets for the purposes of or in connection with the construction, maintenance and use of the rapid transit system and the Bristol Harbour Railway. Where the power under this article would be exercised within the boundaries of a street outside of the Order limits by virtue of that street having a junction with a street along which the construction of the rapid transit system or the Bristol Harbour Railway, the consent of the street authority (not to be unreasonably withheld) is required. This provision has precedent in article 9 of the NET Order.

Article 9 (Power to execute street works) would confer authority on the promoter to execute works in or under streets in connection with the exercise of powers under *article 8 (power to keep apparatus in streets)*. *Article 9(3)* is not from the model clauses. It limits the exercise of the powers under *article 9* by requiring the consent of the street authority in relation to streets outside the Order limits. It has a precedent in the NET Order (article 10) and is considered appropriate in the circumstances of this Order.

Article 10 (Construction of new and stopping up of existing streets) provides for the construction of certain new footpaths and the stopping up or diversion of certain existing footpaths for which more specific details are given in *Schedule 4 (Streets to be stopped up and the provision of substitutes)*. *Schedule 4* splits these into three categories, footpaths for which a substitute is to be provided (*Part 1*), footpaths for which no substitute is to be provided (*Part 2*), and new footpaths (*Part 3*). This article is based on the model clauses with some variations based on article 10 of the Cambridgeshire Order.

Article 10(3)(b) differs slightly from the model clauses in that it requires a temporary alternative route for the passage of such traffic as *is reasonably likely to have used the street to be stopped up* (as opposed to “such traffic as *could* have used the street” in the model clauses). This is intended to avoid any potential esoteric argument about what traffic could potentially have used the street and has precedent in article 11(2)(b) of the NET Order.

Article 11 (Temporary stopping up of streets) provides for the temporary stopping up of streets subject to the consent of the street authority concerned (not to be unreasonably withheld but which may be subject to reasonable conditions) or, in the case of the temporary stopping up of those streets specified in *Schedule 4* or *Schedule 5* to the Order, following consultation with the street authority. In addition to the model clauses, the article provides that the promoter may use any street stopped up under the powers of this article as a temporary working site, an addition that has precedent in the NET Order (article 12) amongst others.

Article 12 (Access to works) would confer power to provide or improve 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 (such approval not to be unreasonably withheld). This provision is based on article

11(b) of the model clauses. Article 11(a) of the model clauses is not necessary in these circumstances.

Article 13 (Construction and maintenance of new, altered or diverted streets) makes provision for new footpaths and streets, and alterations or diversions, to be completed to the reasonable satisfaction of the highway authority (or the street authority in the case of alterations or diversions) and for their maintenance by the promoter for a period of 12 months, and by the relevant authority thereafter. In addition to the model clauses provisions, *article 13(3)* makes it explicit that, except as provided in the article, 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. This provision has precedent in article 14 of the NET Order and is necessary for the sake of clarity.

Article 14 (Agreements with street authorities) would authorise street authorities and the promoter to enter into agreements relating to the construction of new streets, works in or affecting streets and the stopping up, alteration or diversion of streets. It varies at paragraphs (b) and (c) from the model clauses, following the precedent in the NET Order (article 17). These paragraphs provide for further matters about which the promoters may reach agreement with the street authority as this is considered appropriate and necessary for the adequate integration of the rapid transit system and Bristol Harbour Railway with the surrounding streets.

Article 15 (Guided busway highway crossings) would permit the promoter to construct new road crossings in respect of roads or highways created after the application for this Order enabling rapid transit vehicles to cross those roads or highways on the level. Any traffic sign which is put in place is to be treated as if placed under the Road Traffic Regulation Act 1984. This article is necessary for protecting the continuing operation of the rapid transit system and has precedent in article 18 of the NET Order. The provisions in the NET Order relating to protective equipment and the like are not considered necessary in this case because of the nature of the vehicles using the guided busway (which will be buses capable of using ordinary highways as opposed to trams).

Article 16 (Temporary closure of and works in waterways) would enable the promoter, upon giving notice to the navigation authority, temporarily to interfere with navigation on parts of the River Avon New Cut and the Bristol Floating Harbour during the construction of the works by maintaining temporary works to carry out the works required to Prince Street Bridge, the Chocolate Path, Ashton Avenue Bridge and Vauxhall Bridge. It would also enable the promoter to anchor and use certain vessels for these purposes and to temporarily close and de-water those parts of the relevant waterways and divert barges and other boats from all or part of them. It makes further provision for rights of navigation and any obligations of the navigation authority to maintain navigation to be suspended and therefore unenforceable against the navigation authority during the period of closure. Compensation is payable by the promoter in relation to the suspension of any private right of navigation. This article is necessary for this project so that the works over the waterways concerned can be built and has precedent in article 20 of the NET Order.

Article 17 (Discharge of water) would enable the promoter to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the proposed works with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions.

Article 18 (Safeguarding works to buildings) would permit the promoter to carry out certain safeguarding works before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to buildings which may be affected by the works. Provision is made for certain restrictions and the payment of compensation. Article 18(11)(a)(iii) is in addition to the model clauses but has its precedent in the NET Order (article 22(11)(c)). Its intention is to expand slightly the purposes for which safeguarding works may be carried out, to include works to secure the safe operation of the rapid transit system and Bristol Harbour Railway, for example, to carry out works to structures overhanging or adjacent to the busway or tramway which are in a dangerous condition – such works might not be covered by paragraphs (11)(a)(i) and (ii).

Article 19 (Planning permission: supplementary matters) modifies planning legislation as respects the application of Tree Preservation Orders and the treatment of land as operational land where planning permission is granted by direction of the Secretary of State.

Article 20 (Power to survey and investigate land, etc.) would confer upon the promoter power to survey and investigate land and to make trial holes after notifying the owners and occupiers of the land, and includes provision for the payment of compensation. In addition to the provisions of the model clauses, the promoter would be authorised to 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. Such a provision has a precedent in the NET Order (article 25) and is considered to be a useful and appropriate extension to these preparatory powers.

Article 21 (Mode of construction and operation of authorised tramway) specifies the manner in which the realigned Bristol Harbour Railway is to be constructed and operated as tramway (so that the street or other place along which it may run is safe for all users having regard to the character and usage of the street or other place), making provision for certain works in a street along which an authorised street tramway is constructed to require the consent of the promoter. This latter provision is not in the model clauses but has a precedent in article 26 of the NET Order and is considered to be necessary on the grounds of protecting the tramway and also public safety.

Article 22 (Obstruction of construction of authorised works) would make obstructing the construction of the proposed works or interfering with apparatus belonging to a person acting under the authority of the promoter a criminal offence.

PART 3

ACQUISITION AND POSSESSION OF LAND

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of or in connection with the intended works and the promoter's undertaking. Each of the powers of compulsory acquisition may be exercised only in relation to land required for Work No.1A or Work No. 1B but not both.

Article 23 (Power to acquire land) would authorise the compulsory acquisition of the land shown on the plans deposited in connection with the application so far as required for the purposes of the intended works, or for any other purposes connected with the rapid transit system and realignment of the Bristol Harbour Railway as tramway.

In addition to the restriction on acquisition on land relating to Works No.1A and 1B *article 23(3)* is a variance from the model clauses. As in relation to *article 5 (power to construct and maintain works)*, this allows the promoter to acquire land regardless of anything done pursuant to Part 1 of the Commons Act 2006.

Article 24 (Application of Part I of the Compulsory Purchase Act 1965) provides for Part 1 of the Compulsory Purchase Act 1965 (as modified by the Order) to apply to the acquisition of land under the Order as it would to a compulsory purchase authorised under the Acquisition of Land Act 1981.

Article 25 (Application of Compulsory Purchase (Vesting Declarations) Act 1981) provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981, which contains vesting procedures for land subject to compulsory purchase powers.

Article 26 (Powers to acquire new rights) would permit the promoter to create and acquire easements and other new rights affecting land rather than the whole interest in any land. For this purpose, various enactments concerning compulsory acquisition and compensation would have effect as modified by *Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)* to the Order.

Article 27 (Rights under or over streets) provides that the promoter may use a street for the works without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

Article 28 (Temporary use of land for construction of works) provides that the promoter may take temporary possession of land (i) specified in *Schedule 7 (land of which temporary possession may be taken)* and (ii) it may acquire compulsorily in so far as it has not already begun the compulsory acquisition process in relation to that land, for the construction of the authorised works. Paragraph (ii) is additional to the model clauses but has its precedent in the NET Order (article 36) and others and simply allows the promoters to take possession of land in advance of its compulsory purchase. The promoter would not be permitted to remain in

possession of the land for a period of more than 2 years (not 1 year as in the model clauses) after the completion of the works as specified in that Schedule. The period of 2 years is necessary given the scale and extent of the works to be carried out and the time that will need to be taken to return land back to its previous condition. The NET Order and Merseytram Order similarly provided for a period of 2 years. The article would also require the payment of compensation to the owners and occupiers of the land in relation to the temporary possession.

Also in variance to the model clauses is paragraph (5) which identifies certain parcels of land (largely comprising the site of the proposed flood mitigation works for the proposed football stadium at Ashton Vale) which the promoter shall not be required to reinstate to the reasonable satisfaction of the owner. This is because the temporary works proposed on this land are in order to increase the flood storage capacity of the land but will otherwise leave the land in a substantially similar condition. In addition the works are advantageous to the proposed stadium since they reduce the extent of flood mitigation works that development will require.

Article 29 (Temporary use of land for maintenance of works) provides that the promoter may take temporary possession of land within the Order limits required for the purpose of maintaining the works or any ancillary works connected with it or securing the safe operation of any such work in the 5 years following the beginning of public use of the works. Temporary works can be constructed on the land as reasonably necessary. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Article 30 (Disregard of certain interests and improvements) provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

Article 31 (Set-off for enhancement in value of related land) provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

Article 32 (Acquisition of part of certain properties) would enable the promoter to acquire a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Upper Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965.

Article 33 (Extinguishment or suspension of private rights of way) provides for the extinction or suspension of private rights of way over land subject to compulsory acquisition or appropriation for the purposes of the Order. Such rights are suspended where the promoter takes temporary possession, until this is given up. Provision for notification and the payment of compensation is included. In addition to the provisions of the model clauses, the article provides for the promoter to enter into

agreements making contrary provision and for the promoter to exclude the application of the provisions of this article. Such provision has precedent in the NET Order (article 41) and is useful for the purposes of flexibility.

Article 34 (Open Space) would require the promoter to provide land in exchange for any public open space acquired compulsorily in connection with the authorised works. This article would also discharge the promoter from all rights, trusts and incidents to which the original open space was previously subject.

Paragraph (4) is additional to the model clauses and alters the application of the Acquisition of Land Act 1981 to ensure that the Exchange Land is transferred to the relevant local authority (rather than, if the Act were left to apply unaltered, to the original owner of the Open Space Land). This is intended to secure the use of the Exchange Land as open space since, if the land were vested in a private landowner, that landowner would (unless there were some specific right in favour of the public to use the relevant open space, which so far as the promoter is aware there is not) have no obligation to use that land as open space.

Article 35 (Time limit for exercise of powers of acquisition) provides a time limit of 5 years from the coming into force of the Order for the exercise of the proposed powers of acquisition and possession.

PART 4

OPERATION OF THE TRANSPORT SYSTEMS

Article 36 (Power to operate and use transport systems) would authorise the promoter to operate and use the rapid transit system and the realigned Bristol Harbour Railway as a tramway in each case for the carriage of passengers and goods. It would also grant to the promoter exclusive rights in relation to the operation of the guided busway, supported by the creation of a criminal offence for unlawful use. This provision has a precedent in article 34 of the Cambridgeshire Order.

As in relation to *article 5 (power to construct and maintain works)* and *article 23 (power to acquire land)*, this article allows the promoter to operate the rapid transit system and realigned Bristol Harbour Railway regardless of anything done pursuant to Part 1 of the Commons Act 2006.

Article 37 (Power to charge fares) contains powers for the promoter to charge fares for travelling on the rapid transit system and on the realigned Bristol Harbour Railway. In addition to the model clauses, it provides for the entry into agreements for ticketing arrangements, which is to ensure that the promoters have the relevant powers to do so.

Article 38 (Removal of obstructions) provides for the person in charge of a vehicle obstructing any rapid transit vehicle using the guided busway or any train using the Bristol Harbour Railway, from which a load has fallen obstructing either system, to be responsible for its immediate removal. In default, provision is made to enable the promoter to take reasonable steps to remove the obstruction and to recover its expenses from the person in charge of the vehicle at the time or, in certain

circumstances, the vehicle's owner. Further, an offence is created in relation to the wilful interference with or the obstruction of the operation of the authorised guided busway or realigned Bristol Harbour Railway.

Article 39 (Traffic signs) would enable the promoter to place and maintain traffic signs for the purposes of the rapid transit system and the realigned Bristol Harbour Railway and makes provision requiring the promoter to consult with and to enter into arrangements with the traffic authority for this purpose. It also modifies the Road Traffic Regulation Act 1984 to have application to the both the rapid transit system and Bristol Harbour Railway.

Article 40 (Traffic regulation) would, for a period of 12 months following the opening of the authorised tramway for public use, allow the promoter to:

- *permit*, prohibit or restrict the stopping, waiting or loading or unloading of vehicles along certain roads;
- authorise the use of specified roads as a parking place;
- make provision as to the direction of vehicular traffic;
- create new bus lanes; and
- *permit* or prohibit vehicular access to certain roads,

in each case as specified in *Schedule 8*. The two references to *permit* in italics are not included in the model clauses, but are considered to be a necessary corollary to the intention of the article and have a precedent in article 50(1) of the NET Order amongst others.

As in article 50 of the NET Order, in addition to the model clauses' provisions, this article also includes more general powers at paragraph (2) in relation to traffic regulation, allowing the promoter, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the rapid transit system or Bristol Harbour Railway, to:

- revoke, amend or suspend in whole or in part any order made under the RTRA 1984;
- permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- authorise the use as a parking place of any road;
- make provision as to the direction or priority of vehicular traffic; or
- permit or prohibit vehicular access to any road.

Requirement is made for the chief officer of police and the relevant traffic authority to be notified in advance of the exercise of the powers under paragraphs (1) and (2) of the article. The article also includes a specific power to vary or revoke provisions made under the article.

These provisions are considered to be important in order properly to put into place the authorised guided busway and street tramway and clarify further the provisions already contained in the model clauses. The flexibility they afford will be necessary in order to adapt to refinements to the design of the project and to deal with the construction period effectively.

Article 41 (Power to lop trees overhanging transport systems) would enable the promoter to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised guided busway or tramway and danger to passengers and users. Provision is included for the payment of compensation for loss or damage.

Article 42 (Trespass on transport systems) makes trespass in relation to the proposed off-street areas of the rapid transit system, the tramroad elements of the realigned Bristol Harbour Railway, and other land of the promoter a criminal offence. Requirements are made in relation to the display of notices.

Article 43 (Power to make byelaws) authorises the promoter to make byelaws in relation to the rapid transit system and the realigned Bristol Harbour Railway. In addition, byelaws relating to rapid transit or Bristol Harbour Railway premises would extend to premises of the promoter used for or in connection with the operation or maintenance of the authorised guided busway or tramway including any depot, building, park & ride site and any rapid transit or Bristol Harbour Railway vehicle. Provision for both such matters was made in the NET Order (article 53) amongst others.

Article 44 (Power to contract for police services) makes provision to enable agreements between the promoter on the one hand and police authorities on the other as respects the provision of police services for the rapid transit system, Bristol Harbour Railway and associated premises.

Article 45 (Powers of disposal, agreements for operation, etc.) allows the promoter, with the consent of the Secretary of State, to enter into agreements for the transfer, charge or lease of interests in the authorised works or rights to construct, maintain, use or operate the authorised works. It also provides for the entry into agreements, with the consent of the Secretary of State, that are connected with or consequential on any agreements for such transfer, charge or lease. All of these agreements may provide for any connected or consequential matters, for financing for the construction, maintenance or operation of the authorised works to be provided by the promoter or any other person, and for the transferee, lessee or any other person to exercise, enjoy or be responsible for any related functions of the promoter (under the Order or otherwise), exclusively or concurrently with the promoter or another person. The exercise of such powers by the transferee would be subject to the same restrictions, liabilities and obligations as would apply to the promoter.

The promoter is also empowered to provide to any person in connection with such an agreement, or with the design, construction, financing, maintenance, use or operation of the authorised works such guarantees, indemnities or other forms of security as it considers necessary or appropriate.

These provisions, which differ materially from the model clauses, are necessary given that the model clauses provide for a more traditional structure of construction, operation and maintenance of the authorised works, whereas the promoter may wish to enable more complex contractual arrangements to be entered into. They have precedent in the NET Order (article 55).

Article 46 (Application of landlord and tenant law) would override the application of landlord and tenant law in so far as it may prejudice agreements for the leasing of the guided busway or Bristol Harbour Railway.

Article 47 (Registration of busway services and substitute road services) allows the promoter to provide or secure the provision of replacement services by road where the guided busway is temporarily interrupted, curtailed or discontinued. Paragraph (3) disapplies section 6 of the Transport Act 1985 in relation to such substitute services to the effect that they need not be registered in advance with the traffic commissioner. This provision is not in the model clauses but has a precedent in the Cambridgeshire Order (article 37) and provides for such substitute road services to be provided quickly and effectively. This article also provides that the guided busway is to be treated as a road for the purposes of the registration of bus services under the Transport Act 1985.

PART 5

PENALTY FARES

Part 5 makes provision under which a person travelling on the rapid transit system without a ticket or other authorisation may be liable to pay a penalty fare.

This Part is not found in the model clauses but can be found in previous rapid transit scheme Orders such as the Merseytram Order and the NET Order. It provides flexibility in ticketing and revenue protection options.

Article 48 (Interpretation of Part 5) makes provision for the interpretation of this Part.

Article 49 (Operation of Part 5) provides that the penalty fare provisions have effect from such time as is specified by the Secretary of State. It also provides for the Secretary of State to require the penalty fare provisions to cease if he suspects on reasonable grounds that the promoter is not complying with the requirements of this Part.

Article 50 (Penalty fares) provides for the levying of penalty fares on persons failing to produce a ticket. However, an exception is provided where the person could not buy a ticket at the stop or on the rapid transit vehicle. That exception only applies at a time when tickets are generally available for sale at stops or on rapid transit vehicles – this is to recognise the possibility of an off-vehicle ticketing system - where all ‘tickets’ may be purchased at a PayPoint (retail outlets), by smartcard or by mobile phone and accordingly there would be no platform ticket machines or on board conductors (just ad hoc inspectors). In such circumstances, the exception would not be appropriate.

Provision is also made in relation to the burden of proof and the giving of statements.

Article 51 (Amount of penalty fare) provides that the amount of the penalty fare is £20. The promoter may alter the penalty fare but only with the consent of the Secretary of State.

Article 52 (Document to be issued in connection with penalty fare requirement) provides for the giving of a receipt for the payment of a penalty fare or a written notice requiring payment of a penalty fare and containing certain other particulars, which will then authorise the journey being made.

Article 53 (Notice of penalty fare provisions) requires the posting of warning notices at stops and in rapid transit vehicles.

Article 54 (Supplementary provisions) provides that a person who does not pay a penalty fare when required to do so may be required to give his name and address and provides for an offence in default. The article also requires an authorised person to give proof of authority when requested to do so.

Article 55 (Exclusion of double liability) makes provision to avoid double liability by precluding the institution of proceedings for offences under other enactments (including other provisions of the Order) concerning travel without payment of the correct fare or failure to produce a valid ticket, where a penalty fare has been duly paid or action for its recovery has been brought.

PART 6

PROTECTIVE PROVISIONS

Part 6 of the Order contains protective provisions.

Article 56 (Statutory undertakers, etc.) introduces *Schedule 9 (provisions relating to statutory undertakers, etc.)* to the Order, which contains specific safeguards for statutory undertakers generally.

Article 57 (Minerals) provides that the rights of persons entitled to mines and minerals are not affected by the Order but that liability for damage to the rapid transit system or tramway is preserved.

Article 58 (Saving for highway authorities) contains a saving for the rights of highway authorities to execute highway works. The promoter is the relevant highway authority, but relevant internal consultation has taken place.

PART 7

MISCELLANEOUS AND GENERAL

Part 7 contains a number of miscellaneous and general provisions.

Article 59 (Local enactments) makes clear that the powers contained in the Order take precedence over any existing railway powers within the order limits, in order to ensure that there are no extant powers that might conflict with the proposed rapid transit system and realigned Bristol Harbour Railway in this area.

It also ensures that neither Prince Street Bridge nor Ashton Avenue Bridge shall be swung open during peak hours and limits opening outside those hours in order to secure the efficient operation of the rapid transit system.

Article 60 (Disclosure of confidential information) makes disclosure of certain confidential information obtained upon entry to certain premises under *article 18 (Safeguarding works to buildings)* and *article 20 (Power to survey and investigate land)* a criminal offence.

Article 61 (Defence to proceedings in respect of statutory nuisance) provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 (“the EPA”) in respect of noise if the noise is created in the course of carrying out works authorised by this Order and which are unavoidable or works for which notice has been given under section 60, or consent obtained under sections 61 or 65 of the Control of Pollution Act. Such a provision is not in the model clauses but is common in other Orders (for example, the NET Order (article 78) and is necessary for projects of this type. Railways (in the wider sense of the word) attract the protection of s.122 of the Railways Act 1993 which provides the defence of statutory authority to actions in nuisance. In addition, a defence of general statutory authority would be available by virtue of the power to operate under article 42 of the Order. However, it has been doubted in caselaw (*London Borough of Camden v London Underground Ltd.* [2000] Env. L.R. 369) whether the defence under the Railways Act 1993 (or, it might be argued, under statutory authority more generally) might be available in respect of statutory nuisances that did not affect land but rather were potentially injurious to health, for example, nuisance under s.71(g) of the EPA. By their very nature, bus, tram and rail systems can cause noise emissions that might constitute a nuisance for the purposes of s.71(g) of the EPA. Accordingly, article 61(1) makes it explicit that the construction and operation of the authorised rapid transit system and tramway system will not constitute a statutory nuisance and that enforcement action can not be taken against it, provided certain limitations are met. Necessary ancillary provisions are then made in article 61(2) in relation to the Control of Pollution Act 1974.

Article 62 (Certification of plans, etc.) would require the promoter to submit copies of the book of reference, plans and sections referred to in the Order to the Secretary of State for certification as true copies, following the making of the Order.

Article 63 (Service of notices) makes provision as to the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served.

Article 64 (No double recovery) makes provision to ensure that any compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition to the provisions of the model clauses, this article provides that there is not to be double recovery under two or more different provisions of the Order.

Article 65 (Arbitration) makes provision for differences arising under any provision of the Order, other than those referred to the Upper Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.