

## **TRANSPORT AND WORKS ACT 1992**

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

#### **THE BLACKPOOL TRAMWAY (BLACKPOOL NORTH EXTENSION) ORDER**

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### **EXPLANATORY MEMORANDUM**

This memorandum explains the purpose and effect of each article of and Schedule to the draft Blackpool Tramway (Blackpool North Extension) Order, as required by Rule 10(2)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. It also highlights and explains the requirement for and impact of any departures from the Model Clauses for Tramways contained in Schedule 2 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (“the model clauses”).

The Order is promoted by The Blackpool Borough Council (“the promoter”) to permit the promoter to construct and operate works and compulsorily to acquire land and rights in land for the provision of an extension to the Blackpool tramway system authorised by the County of Lancashire Act 1984 (1984 c. xxi). The extension would run along Talbot Road from North Pier to Blackpool North railway station. The Order would also confer various ancillary powers on the promoter in relation to the extension and would update various of the operating powers conferred on the promoter in respect of the existing Blackpool tramway system, so that the entire network will be operated under a single set of powers. The Order would therefore repeal the corresponding provisions in the County of Lancashire Act 1984.

The Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) (“the model clauses”) but on occasion departs from the model clauses and follows previous precedent orders, in particular, the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (“the Nottingham Order”).

## **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. This is slightly different to the approach used in the model clauses but provides for greater clarity elsewhere in the Order in relation to the area in which the functions under the Order are to be exercised.

*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 they are not appropriate given the on-street nature of the authorised tram system.

*Article 4 (Application of Order to existing Blackpool Tramway)* makes provision for relevant provisions of the Order to apply to the existing Blackpool Tramway, in place of the current operating provisions, which are contained in the County of Lancashire Act 1984 (1984 c. xxi). This will enable the whole network, as extended under this Order, to be operated under a single set of powers. The Order powers will replace the County of Lancashire Act 1984 powers when the extension comes into public use. Paragraph (3) contains a saving for byelaws made under the County of Lancashire Act , which will remain in effect until replaced by new byelaws made under this Order. Provisions of the County of Lancashire Act are dealt with as follows:

<b>County of Lancashire Act 1984 provision</b>	<b>Effect of Order</b>
Section 71 (continuance and maintenance of tramways undertaking)	Retained
Section 72 (temporary tramways may be made where necessary)	Retained
Section 73 (tramways to be kept on level of surface of road)	Repealed and replaced by article 24
Section 74 (power to double tramway lines)	Retained
Section 75 (attachment of brackets, etc., to buildings for tramways purposes)	Retained
Section 76 (provisions as to use of electrical energy)	Repealed and replaced by article 24 (mode of construction and operation of tram system)
Section 77 (temporary stoppage of roads)	Repealed and replaced by article
Section 78 (removal of obstructions)	Repealed and replaced by article
Section 79 (byelaws as to tramways undertaking)	Subject to paragraph 3, repealed and replaced by article 46 (power to make byelaws)
Section 80 (regulations as to tramways undertaking)	Repealed
Section 81 (power to charge)	Repealed and replaced by article 40 (power to charge fares)
Section 82 (lost property)	Repealed
Section 83 (application of Tramways Act 1870)	Repealed and replaced in part by Part 5
Section 84 (For protection of British Telecommunications)	Retained

*Article 5 (Application, modification and exclusion of legislative provisions relating to street works)* provides for the application of the New Roads and Street Works Act 1991 (1991 c. 22). Unlike the model clauses, as well as providing for how 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. The relevant 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 reinstatement of the street as the street authority has under section 72 of the 1991 Act and paragraph (9) makes provision for the promoter to make reasonable requirements for allowing it facilities to monitor the execution of the works and for the protection of the authorised tramway in relation to street works at a crossing for a railway on the level or which affect the tramway. These provisions are relatively standard in complex projects of this type (see, for example, the Nottingham Order (article 4)) and are considered to be necessary in these particular circumstances.

## **PART 2**

### **WORKS PROVISIONS**

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

*Article 6 (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* to the Order and shown on the plans and sections deposited in connection with the application. *Schedule 1* describes works for the purpose of the proposed extension from North Pier to Blackpool North railway station. *Article 6* also provides for the construction and maintenance of 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 carry out:

- works required for strengthening, improving, maintaining or reconstructing any street; and
- works for the strengthening, alteration or demolition of any building or structure.

In addition, unlike the model clauses, paragraphs (5) and (6) provide for the removal of temporary works and the provision of accommodation for apparatus of third parties in conduits, etc., constructed by the promoter for the purposes of the authorised works. Such provisions can be found in the Nottingham Order as amended (article 5) and are useful to allow the promoters to construct the authorised tram system adequately and economically. Paragraph (10) provides for part of the works to be carried out on Blackpool Promenade, notwithstanding the restrictions on development on the Promenade under the County of Lancashire Act.

*Article 7 (Power to deviate)* provides for limits within which the promoter can deviate in the construction of the proposed works. In addition to the model clause provisions, *article 7* provides for the provision of switchings and crossings, etc., and for the lateral deviation of the start and end points of scheduled works as shown on the deposited 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 Nottingham Order (*article 6*).

*Article 8 (Designation of works)* provides that if, due to alteration within the Order's limits or the creation or extinguishment of rights of way, a tramroad would become or becomes a street tramway, or vice versa, this will not affect the way the Order takes effect. This provision, which is not in the model clauses, is intended to cater for the mix of tramways and tramroads proposed under the Order and changing circumstances, e.g. the proposed redevelopment adjacent to Blackpool North railway station, and has its precedent in *article 7* of the Nottingham Order in particular.

*Article 9 (Power to alter layout, etc., of streets)* would permit the promoter to alter the layout of streets in order to accommodate the introduction of a street running tramway, with the consent of the street authority (not to be unreasonably withheld) or, in the case of the alterations respecting certain streets detailed in *Schedule 2* 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 and (iii) to replace or alter the surface or surface treatment of the street. These provisions are required in order adequately to install the authorised works within the street environment and have precedent in *article 8* of the Nottingham Order.

*Article 10 (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 authorised tram system. Where the power under this article would be exercised within the boundaries of a street outside of the Order limits, the consent of the street authority (not to be unreasonably withheld) is required.

*Article 11 (Power to execute street works)* would confer authority on the promoter to interfere with and execute works in or under streets in connection with the exercise of powers under *article 10 (power to keep apparatus in streets)*. *Article 11(2)* is not from the model clauses. It limits the exercise of the powers under *article 11* by requiring the consent of the street authority in relation to streets outside the Order limits. It is considered appropriate in the circumstances of this Order. *Article 8(2)* of the model clauses is not reproduced in *article 11* of the Order as there is no paragraph 3 of *Schedule 7 (provisions relating to statutory undertakers, etc.)* to the Order.

*Article 12 (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 3* 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.

*Article 13 (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 14 (Construction and maintenance of new, altered or diverted streets)* makes provision for new streets and street 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 18 months, and by the relevant authority thereafter. In addition to the model clauses provisions, *article 14(3)* makes it explicit that, except as provided in the article, the promoter will not be liable to maintain the surface of any street in, on, under or over which the scheduled works will be constructed, or the immediate approaches to any such street, unless otherwise agreed with the street authority. This provision has precedent in article 14(4) of the Nottingham Order and is necessary for the sake of clarity.

*Article 15 (Restoration of streets if street tramway discontinued)* makes provision to require the promoter to remove from the street any authorised street tramway which is discontinued and to restore, to the reasonable satisfaction of the street authority, the street to its former condition.

*Article 16 (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 Nottingham 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 tramway with the surrounding streets.

*Article 17 (New road crossings)* unlike the similar provision in the model clauses, this article would permit the promoter to construct new road crossings where roads, not yet in existence, were constructed so as to cross any authorised tramroad. No level crossings are required in respect of current roads. In respect of such crossings, the promoter could provide, maintain and operate at or near any new road crossing protective equipment, as defined. Of such protective equipment, any traffic sign which is put in place is to be treated as if placed under the Road Traffic Regulation Act 1984 (1984 c. 27). This article has precedent in article 18 of the Nottingham Order.

*Article 18 (Attachment of equipment to buildings)* would authorise the promoter to affix brackets and other apparatus and equipment required for the authorised tram system to any buildings. This may only happen with the consent of the building owners, or if consent is not given, if it is authorised by the magistrates' court. Paragraph (5) sets out how the owners of buildings to which equipment is attached may remove such equipment, upon notice to the promoters, to allow for demolition, reconstruction or repair of the building.

*Article 19 (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 20 (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 20(11)(b)(iii) is in addition to the model clauses but has its precedent in the Nottingham Order (article 22). 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 authorised tramway, for example, to carry out works to structures overhanging or adjacent to the authorised tramway which are in a dangerous condition – such works might not be covered by paragraphs (i) and (ii).

*Article 21 (Power to construct temporary street tramways)* contains provisions to enable the promoter to construct temporary street tramways in place of the authorised street tramways if necessary or expedient. Such temporary street tramways may be in the same street as the authorised street tramway or in a street near to that street tramway but would be subject to the consent (not unreasonably withheld) of the street authority. The temporary street tramway would be subject to the same provisions as the authorised street tramways would be in relation to traffic control and (at variance to the model clauses) in relation to powers to carry out street works and associated provisions in order that the temporary street tramway could be effectively put into place.

*Article 22 (Planning permission: supplementary matters)* modifies planning legislation as respects the treatment of land as operational land where planning permission is granted by direction of the Secretary of State.

*Article 23 (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.

*Article 24 (Mode of construction and operation of authorised tram system)* specifies the manner in which the authorised tram system is to be constructed (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). The article also specifies that electricity will be the motive power for the tram system (other than in an emergency or for the purposes of maintenance) and provides for the gauge of the authorised street tramway and authorised tramroad to be 1,435 millimetres.

*Paragraph (5)* makes provision for certain works in a street along which an authorised street tramway is constructed in such manner that the uppermost surface of the rails is level with the surface of the street, to require the consent of the promoter. The works concerned are works for the purpose or having the effect of altering the level of the part of the street in which the tramway is situated. This provision is not in the model clauses but replicates s.73 of the County of Lancashire Act and is considered to be necessary on the grounds of protecting the tramway and also public safety.

*Article 25 (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.

*Article 26 (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 promoter's tram system undertaking.

*Article 27 (Application of Part 1 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 (1981 c. 67).

*Article 28 (Application of Compulsory Purchase (Vesting Declarations) Act 1981)* provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 (1981 c. 66), which contains vesting procedures for land subject to compulsory purchase powers.

*Article 29 (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 4 (modification of compensation and compulsory purchase enactments for creation of new rights)* to the Order.

*Article 30 (Powers to acquire subsoil only)* would enable the promoter to acquire subsoil interests in land only. No further provisions in relation to subsoil lying more than 9 metres beneath surface needs be made in this Order as no tunnels are involved.

*Article 31 (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 32 (Temporary use of land for construction of works)* provides that the promoter may take temporary possession of land (i) specified in *Schedule 5 (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 3(b) is additional to the model clauses but has its precedent in the Nottingham Order (article 36), and other Orders, 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 article would also require the payment of compensation to the owners and occupiers of the land in relation to the temporary possession.

There is no equivalent to article 30(8) of the model clauses as this clause is not considered necessary given that the powers of compulsory acquisition under *article 26 (power to acquire land)* cannot apply to the land specified in *Schedule 5* in any event.

*Article 33 (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 work 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 33(10)* (which requires the consent of the street authority) is additional to the model clauses but is considered to be an appropriate protection for the benefit of the street authority concerned and has precedent in the Nottingham Order (article 37).

*Article 34 (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 35 (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 Lands Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965 (1965 c. 56).

*Article 36 (Extinction 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 and is useful for the purposes of flexibility.

*Article 37 (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 TRAM SYSTEM**

*Article 38 (Power to operate and use tram system)* would authorise the promoter to operate and use the authorised tram system for the carriage of passengers and goods and grants to the promoter exclusive rights in relation to the operation of the tram system, supported by the creation of a criminal offence for unlawful use.

*Article 39 (Maintenance of approved works, etc.)* requires the authorised tram system to be kept in a safe condition, in accordance with any approval under the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994.

*Article 40 (Power to charge fares)* contains powers for the promoter to charge fares for travelling on the authorised tram system.

*Article 41 (Removal of obstructions)* provides for the person in charge of a vehicle obstructing any tramcar using the authorised tram system, or from which a load has fallen obstructing the 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 tram system.

*Article 42 (Traffic signs)* would enable the promoter to place and maintain traffic signs for the purposes of the authorised tram system 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 (198 c. 27) to have application to the tram system.

*Article 43 (Traffic regulation)* would, for a period of 12 months following the opening of the authorised tram system 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; and
- *permit* or prohibit vehicular access to certain roads,

in each case as specified in *Schedule 6*. 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 of the Nottingham Order. Unlike the model clauses, *article 43(1)* does not provide for the revocation of any specific traffic regulation order under the Road Traffic Regulation Act 1984 in so far as it is inconsistent. Such a provision is necessary in this case as specific inconsistent orders have yet to be identified.

As in article 50(2) of the Nottingham Order in addition to the model clause's 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 authorised tram system, to:

- revoke, amend or suspend in whole or in part any order made under the 1984 Act;
- 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 fundamental in order properly to put into place the authorised street tram system 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 44 (Power to lop trees overhanging tram system)* would enable the promoter to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised tram system and danger to passengers and users. Provision is included for the payment of compensation for loss or damage.

*Article 45 (Trespass on tramroads)* makes trespass in relation to the proposed (off-street) tramroads and land of the promoter a criminal offence. Requirements are made in relation to the display of notices.

*Article 46 (Power to make byelaws)* authorises the promoter to make byelaws in relation to the authorised tram system. In addition to the matters set out in the model clauses, it provides at paragraph 2(h) for byelaws for regulating (but not requiring) the maintenance of facades of buildings to which any equipment has been attached or which front onto the tram system. The intention behind this is to limit the health and safety risk posed by works being carried out, not only to overhead line equipment or buildings to which such equipment is fixed, but also to all properties fronting and/or overhanging the authorised tram system. Paragraph 2(h) will allow for the enforcement of a Code of Practice which will govern such matters. Further, byelaws relating to tram system premises would extend to premises of the promoter used for or in connection with the operation or maintenance of the authorised tram system including any depot, building, and any tramcar. Provision for both such matters was made in the article 53 of the Nottingham Order.

*Article 47 (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 authorised tram system and tram system premises.

*Article 48 (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 promoters wish to enable more complex contractual arrangements to be entered into to allow for a different financing structures to be put into place in respect of all or any of the construction, maintenance or operation of the authorised works.

*Article 49 (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 tram system.

*Article 50 (Tramcars deemed public service vehicles)* provides for the application to tramcars on the tram system of regulations made under the Public Passenger Vehicles Act 1981 (1981 c. 14). These regulations cover:

- the conduct of drivers, inspectors and conductors;
- the conduct of passengers;
- the capacity of vehicles;
- the carriage of goods; and
- lost property.

The provisions are not in the model clauses but have a precedent in the Nottingham Order (article 57).

*Article 51 (Substitute road services)* allows the promoter to provide or secure the provision of replacement services by road where the tram system is temporarily interrupted, curtailed or discontinued. Paragraph (3) disapplies section 6 of the Transport Act 1985 (1985 c. 67) 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 Nottingham Order (article 58) and provides for such substitute road services to be provided quickly and effectively.

## **PART 5**

### **PENALTY FARES**

Part 5 makes provision under which a person travelling on the tram 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 tramway Orders such as the Nottingham Order (Part 5) and is necessary for this project in order to provide flexibility in ticketing and revenue protection options.

*Article 52 (Interpretation of Part 5)* makes provision for the interpretation of this Part.

*Article 55 (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 54 (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 tramcar. That exception only applies at a time when tickets are generally available for sale at stops or on tramcars – this is to recognise the possibility of a future off-tram ticketing system – where all ‘tickets’ may be purchased at 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 55 (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 56 (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 57 (Notice of penalty fare provisions)* requires the posting of warning notices at stops and in tramcars.

*Article 58 (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 59 (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 60 (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 authorised street tramway is preserved.

*Article 61 (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.

*Article 62 (Statutory undertakers, etc.)* introduces *Schedule 7 (provisions relating to statutory undertakers, etc.)* to the Order, which contains specific safeguards for statutory undertakers generally. *Schedule 7* itself omits paragraph 2 of the Schedule in the Model Clauses because no permanent stopping-up powers are included in this Order. As stated in the Report on Consultation, relevant statutory undertakers have been consulted.

## PART 7

### MISCELLANEOUS AND GENERAL

Part 7 contains a number of miscellaneous and general provisions.

*Article 63 (Disclosure of confidential information)* makes disclosure of certain confidential information obtained upon entry to certain premises under *article 20 (Safeguarding works to buildings)* and *article 23 (Power to survey and investigate land, etc.)* a criminal offence.

*Article 64 (Defence to proceedings in respect of statutory nuisance)* provides that no one is 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 1974 (1974 c. 40). Such a provision is not in the model clauses but is common in other Orders (for example, Nottingham 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 (1993 c. 43) 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, tram networks can cause noise emissions that might constitute a nuisance for the purposes of s.71(g) of the EPA. Accordingly, article 76(1) makes it explicit that the construction and operation of the authorised tram system will not constitute a statutory nuisance and that enforcement action cannot be taken against it, provided certain limitations are met. Necessary ancillary provisions are then made in article 76(2) in relation to the Control of Pollution Act 1974.

*Article 65 (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 66 (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 67 (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 68 (Arbitration)* makes provision for differences arising under any provision of the Order, other than those referred to the Lands Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.

**TRANSPORT AND WORKS ACT 1992**

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

**THE BLACKPOOL TRAMWAY (BLACKPOOL NORTH EXTENSION) ORDER**

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**EXPLANATORY MEMORANDUM**

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