

## Summary of responses to consultation on proposed revision to the Nottingham Express Transit Byelaws

### Introduction

On 25 February 2013 Tramlink Nottingham Ltd the concessionaire which is extending and operating the Nottingham Express Transit (NET) tram system in Nottingham, issued a consultation on a proposal to amend the NET byelaws pursuant to article 53 of the of the Nottingham Express Transit System Order 2009 (SI 2009/1300) ("the 2009 Order"). The publication of the consultation was approved by the Secretary of State. The replies received and the Department for Transport's ("the Department") responses are summarised below.

### Next steps

Following consideration of the replies, the Secretary of State has confirmed the revised byelaws. The byelaws will come into operation on 31 May 2013. These will be made available on the Nottingham Express Transit website ([www.thetram.net](http://www.thetram.net)) and will be available for inspection at Tramlink's offices and at their information shop in the City Centre. Copies are also available on request to Tramlink.

### Replies and response

1. One member of the public submitted 10 objections (one of which was subsequently withdrawn). The objections and the Department's responses are as follows.

*1) objects to the adoption of the proposed byelaws because the organisation requesting the byelaws adoption is not authorised by the enacting legislation. The power to put in place byelaws for this application is permitted and authorised by the Nottingham Express Transit System Order 2009 Act where Clause 53 permits only the promoter (the local authority) to put in place byelaws. There is no permission for this responsibility to be delegated to others such as Tramlink Nottingham Ltd On this basis the proposal is outside the law (ultra vires) and should be rejected forthwith.*

Under the Concession Agreement the local authority (the promoter) granted to the Concessionaire (Tramlink Nottingham Ltd), as it is permitted to do under Article 55 of the 2009 Order, the right to exercise concurrently with the local authority a number of powers and duties contained in the 2009 Order. These include the power to make byelaws.

The byelaws have been modified, by the addition of a footnote in the introductory paragraph, to ensure that this is clear to those affected by the byelaws.

*2) objects to the adoption of the proposed byelaws as they would perpetuate the position of them not being readily available to the general public, contrary*

*to common law and natural justice. The concern is well demonstrated with the existing byelaws (2003) where a simple enquiry to the Nottingham City Council (NCC) relating to restrictions on photography on the tram resulted in the council stating they could not provide the requested information, albeit it was a request under a freedom of information request; because the byelaws were put in place on behalf of NCC by a third party. The Nottingham city council dealt with this under their reference IGO 10-7630 on 5/10/10 and refused to provide details relating to the bye-law. The proposed bye laws should thus not be permitted to continue the existing arrangement (where the authority would continue to sub-delegate all responsibility) and prevent reasonable access to details of laws; and should be rejected. Proceeding with the proposed byelaws would be against natural justice and the common law of this country. The proposed bye-laws as they are drafted at the moment should not be proceeded with.*

Article 53(11) of the 2009 Order makes it a legal requirement that a copy of the byelaws, once confirmed by the Secretary of State, must be printed and deposited at the principal office of the promoter. The byelaws must, during all reasonable hours, be open to public inspection without payment. In addition, any person can request a copy of the byelaws from the promoter, and on payment of a reasonable sum, the promoter must supply that person with the copy requested.

*3) objects to the adoption of the proposed byelaws on the basis that, apparently because of the sub-delegation of the process, there has not been:*

- ) Adequate and appropriate scrutiny by the Nottingham City Council (i.e. by the relevant NCC advisory committee)*
- ) Adequate and appropriate public consultation prior to them being submitted for adoption. This has resulted in the proposed bye laws being:*
  - ) Unbalanced and unfair in part*
  - ) Not in line with the intent of the enabling legislation*

The procedure for making the byelaws is set out in Article 53 of the 2009 Order. This procedure requires the Secretary of State, and not Nottingham City Council to approve the byelaws. This procedure also requires the current public consultation, with the Secretary of State being able to modify the byelaws as a result of consultation responses before approving the byelaws.

*4) objects to the adoption of the proposed byelaws on the basis that they duplicate or conflict with the general law, and/or common law; as examples please note the following:*

- ) prohibition of some particular offensive weapons but not generally all*
- ) prohibition of taking photographs under defined conditions*
- ) prohibition of certain acts although these are not necessarily contrary to good order.*

*This list is not exhaustive and a full review needs to be undertaken by a person with legal expertise. Accordingly the process of adoption should not be*

*proceeded with, without postponement, a full detailed review and amendment and then resubmission.*

Article 53(1) of the 2009 Order sets out the areas which the byelaws are permitted to cover, these areas are:

- the use and operation of, and travel on, the tramway;
- the maintenance of safety and order on the tramway, on any street along with the tramway is laid and on tramway premises or other facilities, where necessary to ensure the safe operation; and the use of the tramway; and
- the conduct of all persons which on the tramway or on tramway premises, or which could affect the safe operation and use of the tramway.

Article 53(2) provides more particulars in relation to these areas. The byelaws do not go beyond what is permitted by the Order, and are limited in their operation. They do not override any other law of general application, whether statutory or common law.

*5) objects to the adoption of the proposed byelaws on the following basis: that [the proposed byelaws do] not wholly directly address a genuine and specific local problem and do attempt in some cases to deal in general terms with essentially national issues. Examples include:*

- 1) No smoking additional requirements*
- 2) Obscene or abusive words on clothing*
- 3) Gambling*
- 4) Parking and clamping*

Article 53(1) and (2) of the 2009 Order set out the particulars of what the byelaws are permitted to cover; there is no requirement that the byelaws address “a genuine and specific local problem”.

*6) objects to the adoption of the proposed bye laws in that the delegation process as advised within UK government guidance has not been followed, in that: The Nottingham City Council has not formally resolved to adopt these byelaws, and they have not been made under the common seal of the authority.*

Tramlink Nottingham has through the Concession Agreement concurrent power with Nottingham City Council to make byelaws under Article 53 of the 2009 Order. The procedure in Article 53 for the byelaws to be adopted by the Secretary of State does not require that Nottingham City Council (NCC) has to formally resolve to adopt the byelaws.

*7) objects to the to the adoption of the proposed byelaws in that the drafting of the proposed bye laws results in confusion and lack of clarity as to roles and responsibilities relating to enforcement and prosecution. Accordingly the process adoption process should be terminated.*

The draft byelaws make provision for an Authorised Person, i.e. an employee or agent of the Operator (defined in the byelaws), being

Nottingham Trams Limited who is acting in the course of his/her duties or a constable, to enforce them. Enforcement includes providing an Authorised Person with powers to remove an individual from the tramway, in addition to liability for a criminal penalty up to level 3 on the standard scale. Article 53(3) of the 2009 Order provides that a person who contravenes, or fails to comply with, a provision of the byelaws may be guilty of an offence, and that such a person may be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Tramlink Nottingham have provided additional information to the Secretary of State in relation to prosecutions, and it is understood that Tramlink Nottingham anticipate that any prosecutions for breaches of the byelaws which would normally result in the police becoming involved, for example, instances of anti-social behaviour, would be initiated by the Crown Prosecution Service, whilst Tramlink Nottingham, or the Operator would prosecute other breaches, for example parking or fares offences.

*8) objects to the adoption of the proposed byelaws in that the drafting of the proposed byelaws confuses civil and criminal law; and attempts to make some aspects relating to a civil contract (conditions of carriage) a potential criminal offence. This is not in line with UK law.*

The conditions of carriage highlight that the byelaws contain separate legal obligations. They also specifically state that the byelaws must be complied with, and that failure to do so may result in prosecution. The byelaws provide that the conditions of carriage and the byelaws must be complied with, and that failure to do so will trigger the enforcement provisions of the byelaws, including possible criminal penalties.

It is, therefore, both a breach of contract to fail to comply with the byelaws, and separately a possible criminal offence. The civil law breach arises from the conditions of carriage, and the criminal law breach arises from the byelaws. There are no legal restrictions on one act being both a civil wrong and a crime. In prohibiting a breach of the conditions of carriage the byelaws do not go beyond the scope of what they are permitted to cover by the 2009 Order.

*9) objects to the adoption of the proposed byelaws in that they do not fully reflect the intent of the enabling legislation - "NET System Order 2009 Clause 53" - particularly in respect of :*

- Maintenance of Safety and Order*
- Responsibilities of employees of the Operator*
- Regulating maintenance*

*It is not clear on what grounds it is believed that the byelaws do not reflect the intent of the enabling legislation in respect of maintenance of safety and order; responsibilities of employees of the operator and regulating maintenance.*

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