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STATUTORY INSTRUMENTS

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**2001 No. 3682**

The London Underground (East London  
Line Extension) (No. 2) Order 2001

PART IV

MISCELLANEOUS AND GENERAL

**Power to transfer undertaking**

**28.**—(1) Notwithstanding any restriction imposed by a relevant enactment on the power of disposal of land by a relevant authority required for the purposes of its undertaking the Company may with the consent of the Secretary of State enter into and carry into effect an agreement to sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking comprised within the authorised works and any land held by the Company for the purpose of, or in connection with, the authorised works.

(2) Without prejudice to the generality of paragraph (1) above a transfer agreement under paragraph (1) above may provide for—

- (a) the construction, maintenance, use and operation of the authorised works or any part thereof by another person and as to any other matter incidental or subsidiary thereto or consequential thereon; and
- (b) the vesting in another person of all or any of the functions of the Company under this Order.

(3) A transfer agreement may be entered into so as to transfer and vest such property and functions in any other person for such period as may be specified in that agreement or for so long as the agreement remains in force and where such an agreement is entered into references in this Order to the Company shall, to the extent that the agreement so provides, have effect as references to the transferee.

(4) Without prejudice to the powers of the Company to terminate or vary a transfer agreement, a transfer agreement may specify circumstances in which that agreement shall cease to have effect before the expiry of any period specified in any such agreement.

(5) A transfer agreement may include such supplementary, incidental, transitional and consequential provisions as the Company may consider to be necessary or expedient.

(6) Without prejudice to the generality of paragraph (1) above a transfer agreement may provide for the exercise by a transferee, or the Company and a transferee jointly, of all or any of the powers of the Company (whether under this Order or under any other enactment) in respect of the authorised works or any part thereof and for the transfer to and vesting in a transferee, or the Company and a transferee jointly, of those works or any part thereof together with the rights and obligations of the Company in relation thereto.

(7) Subject to paragraph (1) above, the exercise by a transferee or the Company and a transferee jointly, of any of the powers of this Order shall be subject to all statutory and contractual provisions in relation thereto as would apply if those powers were exercised by the Company alone and

accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by another person, or by the Company and a transferee jointly.

(8) Upon expiry of any period specified in a transfer agreement in accordance with paragraph (3) above, or upon a transfer agreement being terminated or otherwise ceasing to have effect, the functions and property of the Company which were transferred by that agreement shall, by virtue of this paragraph but subject to the effect of any further transfer agreement entered into by the Company, be revested in the Company, but such revesting shall not make the Company subject to any of the liabilities of the transferee other than any continuing duties imposed by this Order.

(9) Notwithstanding anything in any transfer agreement, any duty arising under this Order to complete the construction of, or to maintain or operate any works in respect of which the Company's functions are transferred by a transfer agreement, together with such rights and property as are required for the discharge of that duty, shall revert to the Company in the event of the abandonment of those works or in the event that the works are not completed within 10 years of the commencement of construction of those works.

(10) Unless the transfer agreement otherwise provides, if a duty to complete the construction of, to maintain or to operate any works reverts to the Company under paragraph (9) above, the transfer agreement shall terminate and all the functions and property of the Company which were transferred by that agreement shall be revested in the Company in accordance with paragraph (8) above.

(11) Within 21 days of the revesting in the Company of any property or functions pursuant to paragraph (8) or (10) above or the reversion to the Company of any duty, rights or property pursuant to paragraph (9) above, the Company shall serve notice on the Secretary of State, providing him with particulars of the revesting or reversion concerned.

(12) In this article, unless the context otherwise requires—

<sup>F1</sup>  
...

“the 1999 Act” means the Greater London Authority Act 1999<sup>(1)</sup>;

“functions” includes powers, duties and obligations;

“relevant enactment” means <sup>F2</sup>... the 1999 Act;

“relevant authority” means <sup>F3</sup>... Transport for London, and if the context so requires the Mayor of London and the Greater London Authority;

“transferee” means a person to whom all or any of the property or functions of the Company have been transferred by virtue of a transfer agreement; and

“transfer agreement” means an agreement entered into under paragraph (1) above.

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#### Textual Amendments

**F1** Words in art. 28(12) omitted (15.7.2003) by virtue of [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), [Sch. 1 para. 57\(a\)](#)

**F2** Words in art. 28(12) omitted (15.7.2003) by virtue of [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), [Sch. 1 para. 57\(b\)](#)

**F3** Words in art. 28(12) omitted (15.7.2003) by virtue of [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), [Sch. 1 para. 57\(c\)](#)

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#### Commencement Information

**II** Art. 28 in force at 9.11.2001, see [art. 1](#)

## Agreements with Railtrack

**29.**—(1) Without prejudice to article 28 above, the Company and Railtrack may with the consent of the Secretary of State enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any of the authorised works, or any part of those works; and
- (b) any works required for the purposes of or in connection with the authorised works;

by Railtrack or by the Company, or by the Company and Railtrack jointly.

(2) Any agreement made pursuant to the powers conferred by this article may contain such incidental, consequential or supplementary provisions as may be so agreed, including (but without prejudice to the generality of the foregoing) provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the cost of such works or alteration or adaptation or the costs of such construction, maintenance, use and operation as are referred to in paragraph (1) above by the Company or by Railtrack or by the Company and Railtrack jointly; and
- (b) for the exercise by Railtrack, or by the Company, or by Railtrack and the Company jointly, of all or any of the powers and rights of Railtrack and the Company (as the case may be) in respect of any of the authorised works and any works required for the purposes thereof or in connection therewith.

(3) The exercise by the Company or Railtrack or by the Company and Railtrack jointly, of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (2) above shall be subject to all statutory and contractual provisions relating thereto as would apply if such powers and rights were exercised by the Company or Railtrack (as the case may be) alone, and accordingly such provisions shall with any necessary modifications, apply to the exercise of such powers and rights by the Company or Railtrack, or by the Company and Railtrack jointly, as the case may be.

(4) The Company and Railtrack may enter into, and carry into effect, agreements for the transfer to and vesting in Railtrack or the Company, or the Company and Railtrack jointly, of—

- (a) any of the authorised works or any part of any of those works; or
- (b) any works, lands or other property required for the purposes of the authorised works or in connection with such works;

together with any rights and obligations (whether or not statutory) of Railtrack or the Company relating thereto.

(5) In this article “the Company” means the Company or a transferee other than Railtrack under a transfer agreement, within the meaning of article 28 above.

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### Commencement Information

**I2** Art. 29 in force at 9.11.2001, see [art. 1](#)

## Obstruction to construction

**30.** Any person who, without reasonable excuse, obstructs any person acting under the authority of the Company in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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**Commencement Information**

**I3** Art. 30 in force at 9.11.2001, see [art. 1](#)

**Proceedings in respect of statutory nuisance**

**31.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(2)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the authorised works; and
  - (b) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974<sup>(3)</sup>; or
  - (c) that the nuisance is a consequence of the construction, maintenance or use of the authorised works and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974, namely—
- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
  - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded);

shall not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to construction or maintenance of the authorised works.

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**Commencement Information**

**I4** Art. 31 in force at 9.11.2001, see [art. 1](#)

**Control of construction sites: appeals**

**32.** Sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 shall have effect, in relation to works carried out in exercise of the powers conferred by this Order, as if in subsection (7) of each section (appeal against failure to give consent or the giving of qualified consent) for the words “a magistrates’ court” there were substituted the words “the Secretary of State”.

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**Commencement Information**

**I5** Art. 32 in force at 9.11.2001, see [art. 1](#)

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(2) 1990 c. 43.

(3) 1974 c. 40.

### Statutory undertakers etc.

33. The provisions of Schedule 9 to this Order shall have effect.

#### Commencement Information

I6 Art. 33 in force at 9.11.2001, see [art. 1](#)

### Protective provisions

34. The provisions of Schedule 10 to this Order shall have effect.

#### Commencement Information

I7 Art. 34 in force at 9.11.2001, see [art. 1](#)

### As to application of certain railway enactments

35.—(1) Any enactment by which any railway or former railway of Railtrack comprised within the designated lands was authorised shall have effect subject to the provisions of this Order.

(2) Nothing in paragraph (1) above shall prejudice any express statutory provision for—

- (a) the protection of the owner, lessee or occupier of any property which is specifically designated property in such statutory provision; or
- (b) the protection or benefit of any public trustees or commissioners, corporation or other person, specifically named in such provision.

(3) In this article “designated lands” means any land described in the book of reference which is owned by Railtrack.

#### Commencement Information

I8 Art. 35 in force at 9.11.2001, see [art. 1](#)

### For the protection of Railtrack

36. If the powers of the Company under this Order to construct the authorised works or any part of those works are exercised by the Company or are transferred to another person other than Railtrack by virtue of a transfer agreement under article 28 above, the provisions of Schedule 11 to this Order shall apply for the protection of Railtrack.

#### Commencement Information

I9 Art. 36 in force at 9.11.2001, see [art. 1](#)

### For the protection of the Company in the event of transfer

37. If the powers of the Company under this Order to construct the authorised works or any part of those works are transferred to another person by virtue of a transfer agreement under article 28 above, the provisions of Schedule 12 to this Order shall apply for the protection of the Company.

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**Commencement Information**

**I10** Art. 37 in force at 9.11.2001, see [art. 1](#)

**Maintenance of approved works etc.**

**38.**—(1) Where pursuant to regulations<sup>(4)</sup> made under section 41 of the 1992 Act (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railways authorised by this Order, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways so authorised.

(2) If without reasonable cause the provisions of paragraph (1) above are contravened, the Company shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by or with the consent of the Health and Safety Executive or the Director of Public Prosecutions.

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**Commencement Information**

**I11** Art. 38 in force at 9.11.2001, see [art. 1](#)

**Public open space**

**39.**—(1) As from the later of—

- (a) the date on which this Order comes into force; or
- (b) the date on which the special category land is vested in the Company; or
- (c) the date on which the exchange land is vested in the Company;

the exchange land shall vest in the London borough of Lewisham.

(2) The vesting of the exchange land in the London borough of Lewisham shall—

- (a) be subject to the like rights, trusts and incidents as attached to the special category land; and
- (b) the special category land shall thereupon be discharged from all rights trusts and incidents to which it was previously subject.

(3) In this article—

“the special category land” means the land delineated on the deposited plans and thereon numbered 66 in the London borough of Lewisham; and

“the exchange land” means the land delineated on the deposited plans and thereon numbered 66a, 67, 68, 70, 74a and 75 in the London borough of Lewisham.

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**Commencement Information**

**I12** Art. 39 in force at 9.11.2001, see [art. 1](#)

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(4) S.I.1994/157.

### Disapplication of land designated as a strategic freight site

**40.**—(1) As from the date on which the relevant land is acquired or appropriated for the purposes of this Order the designation of that land as a strategic freight site shall cease to have effect.

(2) In this article—

“designation as a strategic freight site” means designation as such a site for the purpose of the lists of strategic freight sites which Railtrack is required to keep pursuant to any scheme and any agreement entered into pursuant to section 85 and section 91(1)(c) of the Railways Act 1993<sup>(5)</sup>;

“the relevant land” means the land delineated on the deposited plans and numbered 101, 105, 106 and 108 in the London borough of Lewisham.

#### Commencement Information

**I13** Art. 40 in force at 9.11.2001, see [art. 1](#)

### Certification of plans etc.

**41.** The Company shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections, and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the deposited sections and deposited plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### Commencement Information

**I14** Art. 41 in force at 9.11.2001, see [art. 1](#)

### Service of notices

**42.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978<sup>(6)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) above is, if he has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

<sup>(5)</sup> 1993 c. 92.

<sup>(6)</sup> 1978 c. 30.

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**Changes to legislation:** There are currently no known outstanding effects for the The London Underground (East London Line Extension) (No. 2) Order 2001, PART IV. (See end of Document for details)

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- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

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**Commencement Information**

**I15** Art. 42 in force at 9.11.2001, see [art. 1](#)

**No double recovery**

**43.** Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

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**Commencement Information**

**I16** Art. 43 in force at 9.11.2001, see [art. 1](#)

**Arbitration**

**44.** Any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

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**Commencement Information**

**I17** Art. 44 in force at 9.11.2001, see [art. 1](#)



**Changes to legislation:**

There are currently no known outstanding effects for the The London Underground (East London Line Extension) (No. 2) Order 2001, PART IV.