

*These notes refer to the Crossrail Act 2008 (c.18)  
which received Royal Assent on 22 July 2008*

# **CROSSRAIL ACT 2008**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Crossrail Act 2008 ("the Act") which received Royal Assent on 22 July 2008. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. The main purpose of this Act is to secure the powers necessary to build Crossrail. Crossrail will consist of new rail tunnels running west-east through central London connecting directly with existing surface rail routes to Maidenhead and Heathrow in the west and Shenfield and Abbey Wood in the east. By connecting the major London rail terminals of Paddington and Liverpool Street, Crossrail will enable interconnecting mainline train services to cross the centre of London via a number of new purpose-built stations.

### **HYBRIDITY**

4. The Bill for the Act was treated during its passage through Parliament as a Hybrid Bill, because it contained provisions which have an impact on the interests of particular individuals, as well as containing provisions of a more general public nature. A Hybrid Bill is a Public Bill promoted by the Government which affects particular private interests in a way different from the generality of people affected by the Bill.
5. This treatment meant that individuals, groups and organisations who were especially and directly affected by the Bill had an opportunity to oppose it or to seek its amendment before a Select Committee in each House of Parliament. A special report of the House of Commons Crossrail Select Committee was published on 18 October 2007 and can be found at <http://www.publications.parliament.uk/pa/cm/cmcross.htm#reports>; the corresponding report of the House of Lords Crossrail Select Committee was published on 27 May 2008 and can be found at <http://www.parliament.the-stationery-office.co.uk/pa/ld200708/ldselect/ldcross/112/11202.htm>. The House of Commons Information Office Factsheet on Hybrid Bills (L5) can be found at <http://www.parliament.uk/documents/upload/l05.pdf>.

### **OVERVIEW OF THE STRUCTURE**

6. The Act comprises 58 sections and 17 Schedules. The main provisions of the Act provide for:
  - the authorisation of works necessary to build Crossrail and associated works. These powers are vested in "the nominated undertaker" and the Act gives the Secretary

of State the ability to nominate that undertaker. The Department for Transport is currently being assisted in taking the project forward by Cross London Rail Links Limited (CLRL) – a Department for Transport/Transport for London joint venture company. Binding agreements setting out the final form of project delivery including the letting and management of major construction contracts were being negotiated at the time of Royal Assent to the Act, and so flexibility in respect of project control is contained in the Act. However, a non-binding Heads of Terms agreement between the Secretary of State for Transport and Transport for London concerning the project was made available to Parliament and to the public generally during the passage of the Bill (see [www.dft.gov.uk/pgr/rail/pi/crossrail/crossrailheadsofterms](http://www.dft.gov.uk/pgr/rail/pi/crossrail/crossrailheadsofterms));

- the acquisition of land and interests in land necessary for those works. The powers of compulsory purchase provided by the Act are vested in the Secretary of State but could also be transferred to the Greater London Authority or Transport for London, again to provide flexibility in implementation. The compulsory purchase powers in the Act expire five years after Royal Assent, though they could be extended;
  - the establishment of a planning and heritage regime for the works. The former seeks to give local planning authorities and the various statutory bodies an appropriate degree of control over the planning aspects of the project (and is augmented by other arrangements, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). Heritage issues are also the subject of separate agreements with English Heritage and local authorities;
  - the application of existing railway and other miscellaneous legislation to Crossrail. This includes provision for two new duties for the Office of Rail Regulation which are relevant in respect of Crossrail and its interface with the existing network;
  - the transfer by a scheme of property, rights and liabilities from CLRL or the Secretary of State, or their wholly-owned subsidiaries, or, with their consent, the Greater London Authority, Transport for London, the London Development Agency or any of their subsidiaries, that may be necessary to ensure that the nominated undertaker is capable of delivering the project; and
  - the devolution of control of the Crossrail project to the Greater London Authority or Transport for London (or a combination of the two).
7. A copy of the 1996 Act can be found at <http://www.opsi.gov.uk/ACTS/acts1996/1996061.htm>.

## **COMMENTARY ON SECTIONS AND SCHEDULES**

### ***Works***

#### ***Section 1: Construction and maintenance of scheduled works***

8. *Section 1(1)* authorises the nominated undertaker to construct and maintain the works necessary for Crossrail. The principal works necessary – the so called “scheduled works” – are listed in Schedule 1 and are also shown on the plans and sections deposited with the Crossrail Bill on its introduction.
9. *Section 1(2)* requires, subject to section 1(3), the scheduled works to be constructed in the lines or situations, and on the levels, shown on the deposited plans and sections. The plans and sections therefore give an indication of where the works will be constructed. Also, if in the case of a station, depot or shaft, the deposited sections show an upper limit, the relevant works must be constructed within that limit.
10. *Section 1(3)* allows the nominated undertaker to construct or maintain a scheduled work in a different lateral position from that shown on the plans, as long as it is within the area shown for the work on the plans (the “limit of deviation” for the work). This flexibility,

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and the flexibility provided by sections 1(4) and 1(5), is customary in Acts for railway projects and reflects the fact that some movement may be necessary, for example to avoid hidden obstacles that are only discovered once construction is underway.

11. *Section 1(4)* allows the nominated undertaker to deviate in respect of works to any extent downwards.
12. *Section 1(5)* allows the nominated undertaker to deviate in respect of works upwards to an extent of three metres, save in respect of the works identified in section 1(5)(a) where the upward limit of deviation is six metres.
13. However, *section 1(6)* provides that where an upper limit for a station, depot or shaft is shown on the deposited sections, the power to deviate is subject to that upper limit.

***Section 2: Works: further and supplementary provisions***

14. *Section 2* brings into effect Schedule 2, which contains additional provisions about the works which may be carried out, primarily to facilitate the main effort of construction of the scheduled works.

***Section 3: Highways***

15. *Section 3* brings into effect Schedule 3, which contains provisions dealing with the highway works necessary for Crossrail.

***Section 4: Overhead lines***

16. *Section 4(1)* disapplies the normal consents regime established under the Electricity Act 1989 for the installation of overhead electric lines on land that is within the limits of deviation for the scheduled works or the land required for Crossrail (the “limit of land to be acquired or used”). The limits of deviation and the limit of land to be acquired or used taken together are referred to in these Explanatory Notes as “the Act limits”.
17. *Section 4(2)* brings into effect Schedule 4, which establishes a replacement consents regime for such lines.
18. *Section 4(3)* provides that once the consent granted under Schedule 4 is revoked or expires, the line to which it relates will revert to being subject to the Electricity Act 1989.
19. *Section 4(4)* provides that any consent granted under Schedule 4 by the Secretary of State for Transport and the Secretary of State for Business, Enterprise and Regulatory Reform, acting jointly, may include the grant of deemed planning permission, with or without conditions.

***Land***

***Section 5: Temporary possession and use***

20. *Section 5* brings into effect Schedule 5, which contains provisions dealing with the temporary possession and use of land required for Crossrail.

***Section 6: Acquisition of land within limits shown on deposited plans***

21. *Section 6(1)* authorises the Secretary of State, rather than the nominated undertaker, to acquire compulsorily the land required for Crossrail within the Act limits.
22. *Section 6(2)* provides that, without prejudice to the general power granted by section 6(1), the land identified in columns (1) and (2) of the table in Part 1 of Schedule 6 may be acquired or used for the purpose set out in column (3) of the table. This table therefore gives an indication of the purposes for which certain parcels of land may be acquired or used (for example, for utility diversions, means of access, or for a worksite).

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23. *Section 6(3)* brings into effect Parts 2 and 3 of Schedule 6, which deal with the application of legislation relating to compulsory purchase and supplementary provisions.
24. *Section 6(4)* provides that the power granted by subsection (1) shall not apply to land if the surface of the land is comprised in a highway and the land is specified in the table in paragraph 15(2) of Schedule 3.
25. *Section 6(5)* provides that the power granted by subsection (1) shall not apply to any land shown as being required temporarily, unless the land is also specified in paragraph 11(1) of Schedule 6. In that case the power does extend to the acquisition of subsoil at a depth greater than 9 metres from the surface of such land.
26. *Section 6(6)* provides that the compulsory purchase power granted by subsection (1) shall expire 5 years after the Act obtained Royal Assent.
27. *Section 6(7)* allows the Secretary of State, by order, to extend the time limit in subsection (6). This extension may be done only once in relation to any particular bit of land, and the time limit may be extended by no more than five years. Any such order is subject to special parliamentary procedure.

***Section 7: Acquisition of land not subject to the power under section 6(1)***

28. *Section 7(1)* allows the Secretary of State to acquire compulsorily land outside the Act limits, if it is needed in connection with Crossrail.
29. *Section 7(2)* and *(3)* enable the Secretary of State to acquire land within the Act limits, if it is needed in connection with Crossrail, but restrict the power so that it only applies where the power under section 6(1) does not. The difference between the two powers is that the former requires the making of a compulsory purchase order, whereas the latter does not (see paragraph 2 of Schedule 6).
30. *Section 7(4)* makes it clear that land may be acquired under these provisions for certain purposes, such as for the relocation of drainage or utility undertakers' apparatus, which can sometimes be needed some distance from the line of the railway itself, or for land statutorily required to be provided in exchange for land taken.
31. *Section 7(5)* allows the Secretary of State to acquire an easement or other new right over the land in question, as opposed to acquiring the land itself.
32. *Section 7(6)* provides that any acquisition under the section would be subject to normal compulsory purchase procedures under the Acquisition of Land Act 1981.
33. *Section 7(7)* provides that the same modifications of the compulsory purchase legislation apply in relation to the acquisition of easements under subsection (5) as apply in relation to the acquisition of easements under section 6(1).

***Section 8: Extinguishment of private rights of way***

34. *Section 8(1)* and *(2)* provide for any private rights of way over land within the Act limits held by the Secretary of State for the purposes of the Crossrail works to be extinguished.
35. *Section 8(3)* sets out certain rights of way that are not to be extinguished.
36. *Section 8(4)* enables the Secretary of State to direct that any other particular right of way is to be excepted from extinguishment under the section.
37. *Section 8(5)* and *(6)* provide for the private rights of way to be extinguished at the time of acquisition, in respect of some land, and at the time of entry onto the land, in the case of other land.

38. *Section 8(7) and (8)* provide that compensation may be payable to anyone who suffers loss as a result of any such extinguishment, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

***Section 9: Extinguishment of rights of statutory undertakers etc.***

39. *Section 9(1)* provides for the rights of statutory undertakers over land held by the Secretary of State for the purposes of the Crossrail works to be extinguished as if it had been acquired under Part 9 of the Town and Country Planning Act 1990.
40. *Section 9(2) to (5)* amend the application of the Town and Country Planning Act 1990. This is primarily necessary because the compulsory purchase powers in the Act are vested in the Secretary of State, not the nominated undertaker, and so the nominated undertaker will not have been the acquiring authority.

***Planning***

***Section 10: Planning: general***

41. *Section 10(1)* provides for deemed planning permission under Part 3 of the Town and Country Planning Act 1990, to be granted for the development authorised by the Act, subject to subsection (2).
42. *Section 10(2), (3), (4) and (8)* provides that the deemed planning permission only applies to development comprising a specified work listed in Schedule 1 to the Act (a “scheduled work”) or, in the case of other ancillary development not comprising a scheduled work which is likely to have a significant effect on the environment or otherwise requires environmental assessment, if the ancillary development has been environmentally assessed in the environmental statements deposited with or produced during the passage of the Crossrail Bill.
43. *Section 10(5)* provides that where an application for planning permission is made to the local planning authority in respect of development excluded from the deemed planning permission conferred by section 10(1) by virtue of subsection (2), (3), (4) and (8), the requirements for environmental assessment are to apply to the application even if the area of the development does not exceed the thresholds provided for in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
44. *Section 10(6)* brings into effect Schedule 7. Schedule 7 establishes a planning regime that seeks to give local planning authorities an appropriate degree of control over the detailed planning aspects of Crossrail (and is to be augmented by other arrangements outside the Act, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). These provisions, and the accompanying documents, are based on the framework established for the Channel Tunnel Rail Link.

***Section 11: Permitted development: time limit***

45. *Section 11(1)* provides that, for scheduled works, the deemed planning permission granted by Section 11 applies only to works begun within ten years of Royal Assent.
46. *Section 11(2)* allows the Secretary of State to extend this time limit by means of an order.
47. *Section 11(3)* provides for such an order to be subject to the negative resolution procedure.
48. *Section 11(4)* disapplies section 91 of the Town and Country Planning Act 1990, which sets out the duration of normal planning permission, in respect of the planning permission granted by subsection (1).

### ***Section 12: Fees for planning applications***

49. *Section 12(1)* allows the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly, to make regulations about the fees to be charged by local planning authorities for the requests for approval of details under Schedule 7 to the Act to be submitted for Crossrail.
50. *Section 12(2)* and *(3)* set out what those regulations may cover.
51. *Section 12(4)* provides for the regulations to be made in the form of a statutory instrument subject to negative resolution procedure.
52. *Section 12(5)* disapplies any regulations made under section 303 of the Town and Country Planning Act 1990, which set out the fees normally charged for planning applications, in respect of any supplementary request for approval arising from a planning application deemed granted by section 10(1) of the Act. Special provision for Crossrail planning fees reflects the special planning regime applying to Crossrail provided by Section 10.

### ***Section 13: Power to disapply section 10(1)***

53. *Section 13(1)* allows the Secretary of State, by means of an order, to disapply the deemed planning permission granted by section 10(1) in respect of development consisting of operations for the maintenance or alteration of the Crossrail works, from the date specified in the order. In essence, this provision allows the Secretary of State to switch off the deemed planning permission granted by the Act in respect of future Crossrail works, should he decide to do so (this is most likely to be used in the case of the electrification and signalling work done on sections of the existing railway network, and would ensure that a single planning regime covered works in relation to existing track after the Crossrail construction phase has been completed).
54. *Section 13(2)* provides that, in the event of such a disapplication, any such development would be subject to the normal provisions of the Town and Country Planning (General Permitted Development) Order 1995 applying to development authorised by a local Act.
55. *Section 13(3), (4)* and *(5)* provide for the order to make different provisions in different cases, and for it to be made by means of a statutory instrument.

### ***Section 14: EIA regulations: replacement development***

56. *Section 14(1), (2)* and *(3)* provide that where a building is demolished or substantially demolished for the purposes of the Crossrail works, any later planning application for its replacement (for example, for building over a Crossrail station) must be accompanied by an environmental assessment if the building demolished or substantially demolished is listed in the table in the section or it is not so listed but the provision of the replacement would be likely to have significant effects on the environment. This provision is intended to ensure that all the direct and indirect environmental effects of the development authorised by the Act are properly assessed at the appropriate stage.

### ***Section 15: Extension of permitted development rights***

57. *Section 15* allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights for work which they carry out in relation to Crossrail, provided that the significant impacts of such diversions have been environmentally assessed for the purposes of the project as a whole. Such assessment would be found within the various statements containing environmental information which the Department has produced at the introduction of the Act and subsequently where significant project changes have emerged. As with section 14, this provision is intended to ensure that the direct and indirect environmental effects of the development authorised by the Act are properly assessed at the appropriate stage.

58. *Section 15* also brings into effect Schedule 8, which enables the Secretary of State to intervene in the process of statutory undertakers carrying out work in relation to Crossrail but under their own permitted development rights. The Secretary of State may intervene under Schedule 8 for the purposes of avoiding a breach of a relevant Parliamentary undertaking or for securing that the environmental effects of carrying out development are not materially different from those assessed.

### ***Heritage***

#### ***Section 16: Disapplication and modification of controls***

59. *Section 16* brings into effect Schedule 9, which contains provisions dealing with the heritage aspects of Crossrail. Section 16 also allows the Secretary of State to make an order which would, in effect, switch off various parts of Schedule 9 in relation to any work constructed in exercise of the powers in this Act. This would enable the restoration of the normal consents regime following the construction of Crossrail and allow post-construction maintenance of Crossrail works to be controlled in the usual way for works affecting listed buildings and other historic property.

#### ***Section 17: Rights of entry***

60. *Section 17* brings into effect Schedule 10, which contains provisions dealing with the rights of entry granted to the Historic Buildings and Monuments Commission for England, or English Heritage as it is more commonly known.

### ***Trees***

#### ***Section 18: Power to deal with trees on neighbouring land***

61. *Section 18(1)* allows the nominated undertaker, by notice, to require the occupier of land on which a tree is situated which overhangs the Crossrail works to remove, top or lop that tree where it is necessary to allow the Crossrail works to be maintained, or for the safe operation of Crossrail.
62. *Section 18(2)* and *(3)* allow the occupier of the land to serve a counter-notice objecting within 28 days, in which case the matter is referred to the County Court to determine whether the notice should be confirmed.
63. *Section 18(4)*, *(5)* and *(6)* allow the nominated undertaker, in default of a notice being complied with, to do himself the things required to be done by the notice, subject to doing any topping or lopping work in a husband like manner and in such a way as to cause the minimum of damage to the tree.
64. *Section 18(7)* allows the occupier of the land on which the tree concerned is growing to apply to the County Court for compensation for loss or damage suffered, or for any expenses in complying with the notice.

#### ***Section 19: Disapplication of controls***

65. *Section 19(1)* and *(2)* disapply tree preservation orders made under section 198(1) of the Town and Country Planning Act 1990 and the provisions of section 211 of the Act, dealing with trees in conservation areas, from any tree works that are carried out under Section 17, or as a consequence of the construction or maintenance of Crossrail works or to enable the safe operation of Crossrail.

## **Noise**

### **Section 20: Control of construction sites: appeals**

66. *Section 20(1), (2) and (3)* modify the operation of sections 60 and 61 of the Control of Pollution Act 1974, so that appeals under those provisions are determined by the Secretary of State or if the parties agree, by arbitration rather than by a magistrates' court.
67. *Section 20(4) and (5)* enable the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly, to make regulations about procedure in relation to such arbitrations. Such regulations must be made by statutory instrument subject to the negative resolution procedure.

### **Section 21: Proceedings in respect of statutory nuisance: defence**

68. *Section 21* provides that an order under section 82(2) of the Environmental Protection Act 1990 may not be made by a magistrates' court in connection with noise emitted from premises, or from a vehicle, machinery and equipment in a street, where the nominated undertaker can show that they are used for Crossrail purposes and the Crossrail works concerned are being carried out in accordance with a notice or consent issued by the local authority under section 60, 61 or 65 of the Control of Pollution Act 1974. These provisions of the 1974 Act address control of noise on construction sites (section 60), consent for work on construction sites (section 61) and consent to exceed noise limits (section 65).

## **Railway matters**

### **Section 22: Objective of ORR in relation to Crossrail**

69. *Section 22(1)* provides that the objectives in section 4(1) of the Railways Act 1993 (which are the components of a general duty) shall, in relation to the Office of Rail Regulation ("ORR"), be treated as including the objective of facilitating the construction of Crossrail. *Section 22(2)* requires the ORR to consult the Secretary of State about the exercise of its duty in section 4(1) of the 1993 Act as modified by section 22(1).
70. *Section 22(3) and (4)* enable the Secretary of State to specify by order when section 22 ceases to have effect. This power is provided as there may be ambiguity concerning precisely when the construction phase of the Crossrail project should be regarded as having been completed. Such an order must be laid before Parliament after being made but is not subject to annulment.

### **Section 23: Duty of ORR to publish reports**

71. *Section 23(1) and (2)* require the ORR to publish a report on two matters from time to time and also at any time that the Secretary of State requires. The first potential subject-matter of such a report is what the ORR has done or proposes to do to further its objective of facilitating the construction of Crossrail (the objective arising under section 22). The second matter is how the ORR has exercised or proposes to exercise its functions in connection with the operation of passenger services that make use of the principal Crossrail tunnel.
72. *Section 23(3)* provides that the ORR shall have regard to such a report where relevant in the exercise of any of its functions.
73. *Section 23(5) and (6)* provide for the termination of the requirement to report when the Secretary of State specifies by order, which must be laid before Parliament but is not subject to annulment. This provision enables the otherwise open-ended requirement to



report to be brought to a close, as a point may be reached when it will cease to serve a useful purpose.

#### ***Section 24: Licensing***

74. *Section 24* temporarily disappplies the requirement for either a licence, or a licence exemption, under the Railways Act 1993 which would otherwise exist in respect of any network constructed using Act powers, and in respect of any train being used on such a network. This disapplication lasts until the Secretary of State gives notice of his determination that the network is ready for commercial use. Before newly constructed track is open for commercial use, it is possible that use will be made of it for construction purposes or for testing, and this section removes the need for a licence in respect of such operations.

#### ***Section 25: Award of Crossrail franchises to public-sector operators***

75. *Section 25* disappplies the prohibition in section 25 of the Railways Act 1993 on public sector operators being a franchisee in respect of passenger railway services. It therefore allows a public sector operator to be a franchisee under a franchise agreement in two circumstances. The first circumstance is where the franchise agreement relates wholly or mainly to services that use the principal Crossrail tunnel. This enables ancillary services to be grouped with a Crossrail service in a public sector operation. The second circumstance is where the franchise agreement relates wholly or mainly to services that operate on at least part of the Crossrail route where such services are likely to be subject to substantial disruption because of Crossrail construction. Substantial disruption to services is determined by reference in particular to the frequency of disruption, the duration of the period during which services are disrupted and the severity of the likely disruption.

#### ***Section 26: Disapplication of franchising and access exemptions***

76. *Section 26(1)* and *(2)* allow the Secretary of State, by means of an order, to revoke or amend certain exemptions granted under the Railways (Heathrow Express) (Exemptions) Order 1994 (“the Heathrow Express Order”). The Secretary of State also has the power to impose, or make more onerous, conditions attaching to the relevant exemptions. The relevant exemptions which may be removed are those which disapply the ORR’s role of approving or directing the entry into access contracts for railway facilities (“access exemptions”), and the exemption preventing services on that track from being franchised.
77. *Section 26(3)* applies to track, stations and facilities where the relevant access exemption contained in the Heathrow Express Order is ended under subsection (1). In such circumstances the Secretary of State may, by means of an order, make provision for treating as void any access contract permitting use of that facility. Exceptions to this provision can also be made in the order, thus enabling a particular contract to continue in existence when others are terminated.
78. *Section 26(4)* provides that the powers granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to access exemptions and access contracts shall only be exercisable for the purposes of facilitating Crossrail passenger services.
79. *Section 26(5)* provides that the powers granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to the exemption from the franchising regime shall only be exercisable for the purpose of facilitating Crossrail passenger services or enabling the franchising of services to Heathrow.
80. *Section 26(6)* provides that an order under this section shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

### ***Section 27: Closures***

81. *Section 27* disapplies the closure provisions of the Railways Act 2005 where any such closure is required in connection with construction or maintenance of the Crossrail works, or as a consequence of Crossrail passenger services. The disapplication does not apply to Crossrail services or facilities themselves.

### ***Section 28: Key system assets***

82. Section 216(1)(b) of the Greater London Authority Act 1999 requires the consent of Transport for London before the creation of any interest in, or rights over, any assets designated as “key system assets”. Such key system assets are designated as such either in, or in respect of, London Underground Limited’s Public Private Partnership agreements. *Section 28(1)* and *(2)* disapply section 216(1)(b) of the 1999 Act – and hence disapply the requirement for Transport for London’s consent – where the creation of such interests or rights would facilitate the construction or operation of Crossrail. The construction and operation of Crossrail may interact with, or have an effect on, the London Underground.

### ***Section 29: Power to designate persons as “protected railway companies”***

83. *Section 29(1)* and *(2)* allow the Secretary of State, with the consent of the private sector company concerned, by order to provide that such company be treated as a protected railway company for the purposes of the Railways Act 1993. Such a company must be the manager of a railway facility that is contained in or associated with the principal Crossrail tunnel.
84. The effect of a company being treated as a protected railway company is to engage sections 59 to 65 of the Railways Act 1993 in respect of that company. These provisions enable the Secretary of State to apply to a Court for a “railway administration order” in respect of an insolvent protected railway company, or to intervene (and apply for such an order) during the voluntary winding up or insolvency proceedings of such a company. The purposes of railway administration orders are to secure the transfer to another company of an undertaking so that relevant railway operations may be continued, and to secure the continuation of such railway operations pending a transfer.
85. *Section 29(3)* provides that an order under the above subsection shall be subject to annulment by a resolution of either House of Parliament.

### ***Section 30: Duty to co-operate***

86. *Section 30(1)* provides a mechanism for the nominated undertaker to require others to co-operate with him during the construction, maintenance and operation of Crossrail, by entering into an agreement to deal with a problem relating to a railway asset. This provision reflects the fact that Crossrail will interact with the existing railways, both overland and underground.
87. *Section 30(2)* provides a reciprocal mechanism for the benefit of any controller of a railway asset (most likely an owner or operator of track) affected by the construction, maintenance or operation of Crossrail.
88. *Section 30(3)* provides for the terms of any such agreements to be agreed between the parties, or else referred to arbitration (for which arbitration section 31 makes provision).
89. *Section 30(5)* provides that the mechanisms arising under subsections (1) and (2) do not apply where the matter requiring resolution is under the (statutory or contractual) jurisdiction of the Office of Rail Regulation.

### ***Section 31: Arbitration after referral under section 30(3)***

90. *Section 31* sets out a mechanism for the arbitration of any disputes under section 30(3).

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91. *Section 31(3)* allows the Secretary of State, who is required to be notified that a dispute has been referred to arbitration, to direct the arbitrator as to the results that are to be achieved, so far as reasonably practicable, by the agreement for which the terms are to be determined under the arbitration. In doing so the Secretary of State is confining the arbitrator's jurisdiction.
92. *Section 31(6)* clarifies what the arbitrator must do: *Section 31(7)* clarifies how he must carry out his functions.

***Section 32: Arbitration under section 30(3): multiple proceedings***

93. *Section 32* sets out the arrangements to apply in the case of multiple arbitrations under section 30, allowing those proceedings to be consolidated or held concurrently.
94. *Section 32(2)* means that any group of hearings to be consolidated must consist of section 30(3) proceedings and arbitral proceedings relating to one or more such set of proceedings.

***Section 33: Transfer of functions relating to works***

95. *Section 33(1)* provides for the Secretary of State, if he acquires any land from a railway operator for the purposes of Crossrail and on that land there are works authorised by statute, to, by means of an order, transfer to him or to the nominated undertaker, any statutory power or duty relating to the works previously exercisable by the railway operator. This section simply allows any statutory powers or duties to be transferred with the land acquired.
96. *Section 33(2)* allows the Secretary of State, by means of an order, to provide for the further transfer to himself or to a nominated undertaker of any power or duty transferred under this section.
97. *Section 33(3)* allows the Secretary of State, if a railway operator acquires any land from the Secretary of State on which there are Crossrail works, to, with the consent of the railway operator concerned, by order transfer any duty under the Act relating to the works.

***Section 34: Application of section 122 of the Railways Act 1993***

98. *Section 34* is designed to make the defence of statutory authority that is available under section 122 of the Railways Act 1993, and is relevant to actions for nuisance etc, available in circumstances where the licensing requirement under the 1993 Act does not apply because of section 24. This is necessary because section 122 only applies where the operator of the relevant railway asset has a licence, or the benefit of a licence exemption, under the 1993 Act.

***Section 35: Application of other railway legislation***

99. *Section 35* brings into effect Schedule 11, which contains provisions dealing with the application of railway legislation to Crossrail.

***Miscellaneous and general***

***Section 36: Transfer schemes***

100. *Section 36* brings into effect Schedule 12, which sets out the power of the Secretary of State to make schemes to transfer property, rights and liabilities.

***Section 37: Transfer schemes : tax provisions***

101. *Section 37* brings into effect Schedule 13, which contains tax provisions relating to transfer schemes made under Schedule 12.

***Section 38: Application of the Greater London Authority Act 1999***

102. *Section 38* would have effect in relation to agreements entered into between Transport for London and the Department for Transport (political sponsors of the Crossrail project) which provide for the transfer of Crossrail assets (and liabilities) from the control of Transport for London to the control of the Secretary of State. This section removes potential impediments to arrangements concerning project governance which were under negotiation at the time of enactment of the legislation.
103. Specifically, *subsection (2)* would remove any prospect that Transport for London might consider itself empowered or obliged, in order to further the strategy or directions of any future Mayor, to breach an agreement relating to the transfer of assets or liabilities.
104. *Subsection (3)* disapplies the requirement for the Secretary of State to consent to acts or transactions further to which land, or a leasehold interest in land, is to be disposed of by Transport for London or a subsidiary of it. This relaxation would occur only in circumstances in which such an act or transaction is in accordance with a pre-existing agreement between the project sponsors.

***Section 39: Holder of functions of nominated undertaker***

105. *Section 39(1)* provides for the Secretary of State to nominate, by means of an order, one or more nominated undertakers for the purposes of the Act .
106. *Section 39(2)* provides that, in the absence of a named nominated undertaker for any provision of the Act , the Secretary of State is deemed to be the nominated undertaker for the purposes of that provision. This is to cover the situations that would arise should no nominated undertaker be appointed or where there is a delay between a nomination ceasing to have effect (for example because an agreement is terminated) and the Secretary of State's making another nomination in favour of some other person.
107. *Section 39(3)* allows the Secretary of State, by agreement with the Mayor of London or whoever is proposed to be named in a nomination order, to fetter his discretion as to the exercise of the power granted by subsection (1). This power is necessary to enable the Secretary of State to make contractual arrangements in respect of the nomination of a person or body as the nominated undertaker.
108. *Section 39(4) and (5)* require the Secretary of State to consult the Mayor of London before making certain nomination orders or entering into an agreement with anyone, other than the Mayor, under which the Secretary of State fetters his nomination power.
109. *Section 39(6)* allows the Secretary of State, by means of an order, to make any modifications to the provisions of the Act resulting from the Act that relate to the Secretary of State, where he has himself the functions of nominated undertaker.
110. *Section 39(7), (8) and (9)* provide that orders made under this section are to be made by statutory instrument and enable the Secretary of State to include in such orders supplementary, incidental, consequential and transitional provisions. Orders made under subsection (6) are subject to the negative resolution procedure.

***Section 40: Disapplication and modification of miscellaneous controls***

111. *Section 40* brings into effect Schedule 14, which contains provisions dealing with the disapplication and modification of miscellaneous controls in relation to Crossrail.

***Section 41: Burial grounds***

112. *Section 41(1)* disapplies existing ecclesiastical and other law in relation to any disturbance of human remains that may be required as a result of the Crossrail works. This provision is included in case the Crossrail works require that any human remains

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be disturbed (some suggest that some London squares to be used for Crossrail were used as burial grounds during the period of the Black Death).

113. *Section 41(2)* provides that the disapplication in subsection (1) only applies in respect of human remains removed, reinterred or cremated in accordance with the provisions of Schedule 15, and if any monument (such as a headstone) of the deceased in question has also been dealt with in accordance with Schedule 15. Schedule 15 therefore sets out the regime that applies in order to ensure that any such remains and monuments are dealt with in an appropriate manner.
114. *Section 41(3)* provides that subsection (2) shall not apply where the use of land required by Crossrail does not involve disturbing the human remains interred in it.

***Section 42: Application of landlord and tenant law***

115. *Section 42* disapplies the provisions of landlord and tenant law in relation to any leases granted by the Secretary of State pursuant to any agreement to take forward the development of Crossrail. This provision will permit the recovery of leased land where a development agreement is terminated and thus ensures that such land is not lost to the Crossrail project in such a case.

***Section 43: Disposal of Crown land***

116. *Section 43* provides for additional flexibility as to the terms of agreements about land acquisition and use to be entered into with each of the Royal Parks Agency and the Crown Estate Commissioners. Each body has responsibilities for the management of land vesting in the Crown, and the functions of each are governed by statute.
117. *Section 43(1)* and *(2)* would allow the Secretary of State (the legal personality of the Royal Parks Agency) to grant leases and rights of way over the Royal Parks without statutory constraint as to their duration or financial terms.
118. *Section 43(3)* similarly gives greater flexibility to the Crown Estate Commissioners in their dealings with land by disapplying relevant statutory constraints.

***Section 44: Prohibition or restrictions on land use imposed for Crossrail purposes***

119. *Section 44* enables covenants between the Secretary of State and persons with an interest in land to bind successors in title to such interests even though they are not direct parties to the original covenant. In order for covenants concerning land to be enforceable against successors in title to such land, the person claiming the benefit should usually have a neighbouring interest in land. The Secretary of State will not have such an interest until the compulsory purchase powers in the Act are exercised, and so in order to allow such covenants to be entered into before then, this section dispenses with the requirement of a neighbouring interest in land.
120. *Section 44(3)* has the effect of enabling such covenants to be categorised as local land charges. If registered as such, a future acquirer should become aware of the prohibitions or restrictions concerned.

***Section 45: Compensation for injurious affection***

121. *Section 45* provides that section 10(1) of the Compulsory Purchase Act 1965, which deals with compensation for injurious affection, shall have effect, in respect of land injuriously affected by the Crossrail works, with the substitution of “nominated undertaker” for “acquiring authority”. This amendment is necessary because the compulsory purchase powers in the Act are vested in the Secretary of State, not the nominated undertaker, and so the nominated undertaker, who will be responsible for any injurious affection compensation, will not have been the acquiring authority.

***Section 46: Compensation for water abstraction***

122. *Section 46(1)* disapplies a provision of the Water Resources Act 1991 which otherwise would impose an absolute prohibition on abstracting water if this causes loss or damage to another person. Such a restriction could prevent or delay Crossrail works being constructed.
123. *Section 46(2)* provides that where water abstraction has caused loss or damage, the person suffering loss or damage must be compensated. The overall effect of section 46 is that the duty to avoid damage by water abstraction creates the possibility of compensation for damage but not the possibility of a court injunction. The practical protection for property owners arises from the requirement that the Environment Agency pre-approve abstraction, for which see Part 3 of Schedule 17.

***Section 47: Temporary possession agreements***

124. *Section 47* makes special provision in respect of certain agreements reached between the Secretary of State and landowners which are intended to reduce the power to acquire land outright to a power only to take temporary possession, or make temporary use, of land. *Section 47(1)* achieves this by providing, where it is agreed, that land shall be treated as if it were subject to the temporary (as opposed to permanent) acquisition regime set out in Schedule 5.
125. *Section 47(3) to (9)* make related provision, including allowing the effect of the temporary possessions regime to be modified by agreement between the landowner and the Secretary of State.
126. *Section 47(10)* provides that any such agreement shall be a local land charge, meaning that it should come to the attention of any intending purchaser of the land concerned.

***Section 48: Application of Act to extensions***

127. *Section 48* permits any Transport and Works Act (“TWA”) 1992 order which relates to a proposed extension of Crossrail, or to the provision of a railway facility connected with Crossrail, to apply any provision of the Act, with any modifications necessary, to the order, or provide for any provision of the Act to have effect as if the extension were part of Crossrail. Certain provisions of the Act – those dealing with the extension of compulsory purchase powers and listed buildings, buildings in conservation areas and ancient monuments – are to be excluded from application in this way. The section allows any such TWA order to make the provision needed to ensure that any extension is subject to the same regime as the Crossrail scheme covered by the Act.

***Section 49: Reinstatement of discontinued facilities***

128. *Section 49* brings into effect Schedule 16, which contains provision concerning the reinstatement of facilities which have been discontinued as a consequence of Crossrail construction, and for planning conditions to be imposed in relation to such development.

***Section 50: Protection of interests***

129. *Section 50* brings into effect Schedule 17, which contains provisions setting out the protections to be provided for various bodies affected by the works.

***Section 51: Power to devolve functions of Secretary of State***

130. *Section 51(1)* allows the Secretary of State, by means of an order, to devolve certain provisions of the Act to the Greater London Authority, Transport for London or to the Greater London Authority and Transport for London. The exercise of this power of devolution would be closely linked to decisions as to the broader transfer to such bodies of responsibilities and controls concerning completion of the project, should the Secretary of State consider this to be appropriate.

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131. *Section 51(2)* allows the Secretary of State to fetter his discretion under subsection (1) by agreement with the Mayor of London or Transport for London.
132. *Section 51(3) to (6)* set out the arrangements to apply to an order under this section. Such an order is to be made by statutory instrument subject to the negative resolution procedure.
133. *Section 51(7)* sets out provisions of the Act which are to be capable of being devolved under this section. These include land acquisition powers and the power to make orders in relation to nominated undertakers.

***Section 52: Correction of deposited plans***

134. *Section 52* sets out a mechanism whereby any inaccuracy in the deposited plans or in the “book of reference” (the list of all the properties affected by the Act that was deposited with the Crossrail Bill when first introduced and which was updated during the passage of the Crossrail Bill through Parliament) that accompanies the Act may be corrected. These provisions are normal in hybrid and local Acts.

***Section 53: Service of documents***

135. *Section 53* sets out how a document may be served on any person, where that is required or authorised under the Act.

***Section 54: Arbitration***

136. *Section 54* sets out how disputes under the Act will be dealt with unless otherwise provided for. Disputes will be settled by a single arbitrator agreed by both parties. If no agreement can be reached on the identity of that single arbitrator, either party may, having informed the other, ask the President of the Institution of Civil Engineers to appoint an arbitrator.
137. If the President of the Institution of Civil Engineers notifies the parties that he is not going to appoint an arbitrator, and the parties are unable to agree on who should act as arbitrator, either party may, having informed the other, ask the ORR to appoint an arbitrator. That arbitrator may be someone from the ORR.
138. The section also allows the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly, to make procedural rules by order governing arbitration. Such an order is to be made by statutory instrument subject to the negative resolution procedure.

***Section 55: “Deposited plans”, “deposited sections”***

139. *Section 55* defines and identifies those plans and sections, as updated during earlier consideration of the Crossrail Bill, which establish the location and nature of Crossrail works.

**COMMENTARY ON SCHEDULES**

***Schedule 1 – Scheduled works***

140. *Schedule 1* sets out the Crossrail scheduled works, which are the main works authorised by the Act. Each of these works has a centre line shown for it on the deposited plans, with a limit of lateral deviation, and a level shown on the deposited sections.

***Schedule 2 – Works: further and supplementary provisions***

141. *Paragraph 1* grants the nominated undertaker general powers to carry out ancillary works additional to the scheduled works.

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142. *Paragraph 2* allows the nominated undertaker to provide highway accesses, whether permanent or temporary, at the points marked on the deposited plans (save where the highway authority objects on the specific grounds provided). Such access may be similarly provided with the consent of the highway authority, such consent not to be unreasonably withheld, at any other point within the Act limits. Any disputes over the provision of highway accesses are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.
143. *Paragraph 3* grants the nominated undertaker the power to divert the particular overhead electric lines listed, as these will need to be moved in connection with the carrying out of the Crossrail works. This is in addition to the general power conferred by paragraph 1(1)(f) of the Schedule.
144. *Paragraph 4* grants the nominated undertaker the power to carry out and maintain landscaping or other mitigation works necessary as a result of the Crossrail works.
145. *Paragraphs 5 to 7* allow the nominated undertaker to safeguard, by means of supporting or strengthening, buildings and other structures.
146. *Paragraph 8* allows the nominated undertaker to make use of sewers and watercourses for removing water in connection with the construction or maintenance of Crossrail. Any disputes over making use of sewers and watercourses are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.
147. *Paragraph 9* allows the nominated undertaker to carry out surveys and investigative works, and to protect or remove flora and fauna, in connection with the construction of Crossrail. Any disputes over entry to carry out surveys and investigative works are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.
148. *Paragraph 10* provides for the temporary obstruction of rights of navigation over certain waterways occasioned by the Crossrail works. The nominated undertaker is also given the power to interfere with the waterways concerned (including its banks, bed and foreshore) at any point within the Act limits, including the power to carry out temporary works and dredging works, temporarily to moor or anchor barges or other vessels and temporarily to close the relevant waterway or a part of its navigation.

**Schedule 3 – Highways**

149. *Paragraph 1* grants the nominated undertaker the power to stop up permanently certain specified highways. Some of the highways may be stopped up without providing a substitute, and some may be stopped up upon the provision of a substitute.
150. *Paragraph 2* grants the nominated undertaker the power to stop up any other bridleway or footpath situated within the Act limits, subject to confirmation by the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly.
151. *Paragraph 3* provides that for any highway, bridleway or footpath stopped up under paragraphs 1 and 2, all rights of way over or along it shall be extinguished. Compensation may be payable to anyone who suffers loss as a result of the extinguishment of a private right of way.
152. *Paragraph 4* provides that the power to carry out associated works conferred by paragraphs 1 and 4 of Schedule 2 may be exercised in a way that permanently obstructs the highway, but only with the consent of the local highway authority. Such consent is not to be unreasonably withheld, and a request for consent is deemed to have been given if it has not been given or refused within 28 days. Any disputes over the granting of consent are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.



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153. *Paragraph 5* allows the nominated undertaker, for the purposes of constructing or maintaining Crossrail, temporarily to stop up, alter or divert any highway, to break up and interfere with the highway and to divert traffic from it. In respect of the highways listed in the paragraph, there is a requirement to consult the local highway authority with a view to ensuring public safety and, so far as reasonably practicable, to reduce public inconvenience. For highways not listed, there is a requirement to obtain the consent of the local highway authority, such consent not to be unreasonably withheld, but consent may be given subject to reasonable conditions in the interest of public safety or convenience. A request for consent is deemed to have been given if it has not been given or refused within 28 days, or within 42 days in respect of certain important roads. Any disputes over the granting of consent are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.
154. *Paragraph 6* authorises the nominated undertaker to use any highway which is temporarily stopped up as a working site, provided that the part of the highway concerned is situated within the Act limits.
155. *Paragraph 7* allows the nominated undertaker to place, maintain, reposition and remove apparatus from any highway within the Act limits.
156. *Paragraph 8* deems certain highway works carried out under the Act to be major transport works for the purposes of the New Roads and Street Works Act 1991. The effect of this is to apply, to highway works carried out by the nominated undertaker under the Act, the same procedures and code for settling how changes to apparatus in a street are dealt with (and costs apportioned) where changes to the apparatus are necessitated by the highway works as applies to highway works carried out by the highway authority.
157. *Paragraph 9* requires any new or altered highway to be completed to the reasonable satisfaction of the highway authority, and for that to be certified by the highway authority, and *paragraph 10* requires any realigned or new highway to be constructed in accordance with specifications approved by the highway authority.
158. *Paragraph 11* provides for a 12 month period after practical completion of any new or altered highway and it being open for public use during which the nominated undertaker is responsible for maintenance (following which the highway authority is responsible for maintenance), and for the issue of certificates. Disputes under those paragraphs are determined by the Secretary of State unless the parties agree to arbitration.
159. *Paragraph 12* provides that nothing in section 46 of the Railways Clauses Consolidation Act 1845 shall require the nominated undertaker to maintain the surface of a highway under or over which the schedule works are constructed, or the immediate approach to any such highway. That responsibility will continue to rest with the highway authority.
160. *Paragraph 13* applies sections 116 to 117 of the Transport Act 1968, which sets out duties in respect of bridges carrying highways over railways.
161. *Paragraph 14* allows the nominated undertaker to enter into agreements concerning the construction of a new highway, the alteration of an existing highway and related matters with those having the charge, management or control of that highway. This allows the nominated undertaker to enter into agreement with, for example, local highway authorities, so that they may, for example, carry out some of the works themselves.
162. *Paragraph 15* allows the nominated undertaker to enter upon, take and use for Crossrail the subsoil of any highway where the subsoil concerned is subject to compulsory purchase under the Act, without being required to acquire that subsoil or any right in it, except in respect of the areas listed in the table in the paragraph.

***Schedule 4 – Overhead lines: consent***

163. *Schedule 4* sets out the alternative consents regime that will apply to the installation of overhead electric lines within the Act limits, given the disapplication of section 37 of the Electricity Act 1989 in section 4.
164. *Paragraph 2* requires any installation to be made in accordance with the consent granted by the appropriate Ministers (defined in paragraph 12 for these purposes as the Secretary of State for Transport and the Secretary of State for Business, Enterprise and Regulatory Reform, acting jointly).
165. *Paragraph 3* sets out what an application for consent should contain.
166. *Paragraph 4* allows the appropriate Ministers to request in writing that the application be supplemented by specified additional information.
167. *Paragraph 5* sets out the publicity requirements that must be complied with in respect of certain applications.
168. *Paragraph 6* allows the appropriate Ministers, within 14 days of receiving an application for consent, to invite the local planning authority to comment on the application. The local planning authority have 28 days to comment on the application.
169. *Paragraph 7* requires the appropriate Ministers, within 14 days of receiving an application for consent, if they consider that the application relates to certain matters, to invite certain other bodies to comment on the application. Those bodies – Natural England and the Historic Buildings and Monuments Commission for England (more commonly known as English Heritage) – will have 14 days to comment on the application.
170. *Paragraph 8* sets out the grounds on which an application for consent by the nominated undertaker may be refused.
171. *Paragraph 9* allows the appropriate Ministers to make the grant of consent subject to any conditions they deem appropriate.
172. *Paragraph 10* allows the Secretary of State to vary or revoke the consent granted, after the period specified in the consent, which will not be less than ten years from the date of installation.
173. *Paragraph 11* provides that subject to paragraph 10, the consent granted will continue in force for the period specified in the consent.

***Schedule 5 – Temporary possession and use of land***

174. *Schedule 5* allows the nominated undertaker temporarily to take over possession of, and make use of, land in connection with carrying out the Crossrail works. The land in question is shown in the table in paragraph 1, together with the purposes for which the land may be used. This table therefore gives an indication of the purposes for which certain parcels of land may be temporarily used (for example, for mitigation works, utility diversions, means of access, the provision of working space, for highway access purposes, or for a worksite). The paragraph requires at least 28 days notice to be given to the owners and occupiers of the land before possession is taken, and the possession is time-limited to one year after completion of the works unless the owners agree otherwise. Compensation may be payable for such possession, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
175. *Paragraph 2* requires the nominated undertaker, before giving up possession of any land used under paragraph 1, to put the land in question back into such condition as may be agreed in a scheme between him, the owners of the land and the local planning authority, or determined by the appropriate Ministers (for these purposes defined as the Secretary of State for Transport and the Secretary of State for Communities and Local

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Government, acting jointly). The paragraph also sets out what such a scheme may and may not require.

176. *Paragraph 3* allows the nominated undertaker to use any road situated on land specified in paragraph 8 of Schedule 6 for the passage of persons or vehicles. Compensation may be payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
177. *Paragraph 4* allows the nominated undertaker, during the maintenance period of any work (which is defined as being up to five years from the date on which the work is brought into general use), to enter upon and take possession of land within the Act limits and within 20 metres of any scheduled work, if such possession is necessary for maintaining the work. The power granted by the paragraph does not apply to any house or garden, or land not subject to compulsory purchase under the Act, and the nominated undertaker must give at least 28 days notice to the owners and occupiers of the land before possession is taken. The nominated undertaker may only remain in possession of such land as long as is reasonably necessary, and must, before giving up possession, restore the land in question to the reasonable satisfaction of the owners of the land. Compensation may be payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
178. *Paragraph 5* allows for private rights of way to be temporarily suspended and provides that compensation may be payable to anyone who suffers loss as a result of any such extinguishment, with any disputes about such compensation to be determined under the Land Compensation Act 1961.
179. *Paragraph 6* makes provisions for the arrangements for the enforcement of any possession required under the paragraph, should the owner or occupier of the land in question refuse to give up possession of it or hinder the taking of possession. It makes similar provision to that applying to the taking of possession following notice of entry on a compulsory purchase.

### ***Schedule 6 – Acquisition of land shown within limits on deposited plans***

#### **Part 1 – Purposes for which certain land may be acquired**

180. *Part 1* sets out in a table the purposes for which certain land may be acquired. The land identified in columns (1) and (2) may be acquired or used for the purpose set out in column (3). This table therefore gives an indication of the purposes for which certain parcels of land may be acquired or used (for example, utility diversions, means of access, or for a worksite).

#### **Part 2 – Application of legislation relating to compulsory purchase**

181. *Paragraphs 1, 2 and 3* provide that the Lands Clauses Consolidation Act 1845 will not apply to the compulsory acquisition of land under the Act. Instead, Part 1 of the Compulsory Purchase Act 1965 is to apply, as it applies to a compulsory purchase order to which Schedule 1 to the Acquisition of Land Act 1981 applies, and as if the Act were a compulsory purchase order under the 1981 Act. However, section 4 of the 1965 Act is not to apply and section 11 of and Schedule 3 to the 1965 Act are to have effect with the amendments mentioned in paragraph 3(3) and (4). These amendments extend the normal time period between notice to treat and entering and taking possession of land from 14 days to one month (in the case of subsoil, or where an easement or other right only is sought) and from 14 days to three months (in the case of all other land).
182. *Paragraphs 4 and 5* provide that the Compulsory Purchase (Vesting Declarations) Act 1981, an alternative means of obtaining land the subject of compulsory purchase, is to apply with modifications as if the Act were a compulsory purchase order. Similar

amendments to the application of the 1981 Act as can be found in paragraph 5 of Schedule 4 to the Channel Tunnel Rail Link Act 1996 are also made.

### **Part 3 – Supplementary provisions**

183. *Paragraphs 6 and 7* allow for the Secretary of State, instead of acquiring all of a person's interests in land outright, to have the power to acquire compulsorily easements and other rights for any purpose for which the land may be acquired, by creating new easements or rights. Where a new right is created, the Compulsory Purchase Act 1965 as applied by the Act is to have effect subject to the modifications mentioned in paragraph 7.
184. *Paragraph 8* sets out land where, in order to reduce blight, rights of way only over land may be obtained. In such cases the Secretary of State is not to have power to acquire the land itself.
185. *Paragraph 9* sets out land where, because it is railway land comprised in the Heathrow Express Railway or needed for access to such land, rights only over land may be obtained. In this case, the rights that may be acquired are limited to rights of access to, or passage along, the existing railway.
186. *Paragraph 10* sets out land where the compulsory purchase power in section 6 is limited to only so much of the land in question as is described in the table in the paragraph. These limitations are intended to reduce blight.
187. *Paragraph 11* gives the Secretary of State the power to acquire subsoil only, without being required to acquire any greater interest in any other part of the land. Certain of the land shown on the deposited plans is required for underground running tunnels and ancillary works which will be more than 9 metres deep. In these cases it is proposed that only the subsoil of the land may be taken (that is, where it is at a depth of more than 9 metres below the surface of the land). A table of this "subsoil only" land is included in the paragraph.
188. *Paragraph 12* sets out further land where the compulsory purchase power in section 6 is limited to rights of way or subsoil more than 9 metres below the surface only.
189. *Paragraph 13* allows the Secretary of State, by order, to provide that new rights may be acquired by such persons as are specified in the order. Some of the land within the Act limits, particularly that outside the limits of deviation but within the limits of land to be acquired or used, is intended to be used for the purposes of diverting statutory undertakers' apparatus. For apparatus placed underground, it would be common for this to be done by the acquisition of easements by the utility concerned, rather than by acquiring the land outright. This paragraph permits this.
190. *Paragraphs 14, 15 and 16* provide, as is traditional in Acts providing for the acquisition of land, an alternative procedure to that set out in section 8(1) of the Compulsory Purchase Act 1965 relating to the acquisition of part only of certain properties. This alternative procedure would have to be invoked by appending the alternative provisions to the relevant notice to treat when it is served.
191. *Paragraph 17* applies the provisions about minerals applying to compulsory purchase orders in Schedule 2 to the Acquisition of Land Act 1981.
192. *Paragraphs 18 and 19* set out the arrangements to apply if the Secretary of State extends the time limit for the exercise of compulsory purchase powers under section 6(7).
193. *Paragraph 20* applies section 4 of the Acquisition of Land Act 1981, which deals with situations where unnecessary things have been done to obtain compensation or increased compensation, as if the Act were a compulsory purchase order for the purposes of the 1981 Act.

## **Schedule 7 – Planning Conditions**

### **Part 1 – Qualifying Authorities**

194. *Paragraph 1* requires the Secretary of State, by means of an order, to name “qualifying authorities” for the purposes of Schedule 7. These are the eighteen local planning authorities which, by the time the Select Committee in the House of Lords had reported, had given the Secretary of State satisfactory undertakings about the handling of planning applications (set out in a Planning Memorandum developed with local authorities). A similar arrangement was adopted for the planning aspects of the Channel Tunnel Rail Link.
195. *Paragraph 1* also allows the Secretary of State to make orders revoking the conferring of “qualifying authority” status and to make subsequent naming orders in certain circumstances. Before making such an order, the Secretary of State is to consult the nominated undertaker and, if it is not the body requesting the order, the relevant local planning authority.
196. *Paragraph 2* allows for any order under paragraph 1 to set out any transitional arrangements that may be necessary (for example, were a local planning authority to cease to be a qualifying authority for the purposes of the Act whilst a number of undetermined planning applications were before it).

### **Part 2 – Development in the area of a unitary authority**

197. *Paragraph 3* establishes Part 2 as the regime to apply in respect of development carried out in the area of unitary authorities (for example, those local planning authorities in London).
198. *Paragraph 4* establishes the circumstances in which the planning conditions for which the Part provides apply, different conditions applying, in general, according to whether the development is in the area of a non-qualifying or qualifying authority.
199. *Paragraph 5* provides for certain matters of detail to be the subject of requests for the approval of the non-qualifying unitary authorities and provides that the only grounds on which they can refuse a request is that the development to which it relates should and could reasonably be carried out elsewhere within Act limits, or that the design or external appearance of any building to which they relate ought to be modified to preserve the local environment or amenity, and is capable of being reasonably modified to do so.
200. *Paragraph 6* provides for certain matters of detail to be the subject of requests for the approval of the qualifying unitary authorities and sets out the grounds on which such authorities can refuse a request. The list of operations and works includes construction works, minor constructions works, fences and walls, artificial lighting, waste and spoil disposal and borrow pits.
201. *Paragraph 7* sets out construction arrangements over which a qualifying unitary authority shall have some control, including road transport, the handling of re-useable spoil and top soil, storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.
202. *Paragraph 8* provides that for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits, no disposal or excavation shall commence unless the nominated undertaker has first agreed with a qualifying unitary authority a scheme for the restoration of the land on which the disposal or excavation is to take place. The only ground on which the authority can refuse to agree such a scheme is that the scheme ought to be modified, and is reasonably capable of being so modified.
203. *Paragraphs 9 and 10* provide for a qualifying unitary authority to grant approval before any Crossrail works are brought into use, other than for stations, depots and the

tunnelled sections of Crossrail. That approval is to be granted if the authority considers that no reasonably practicable measures to mitigate the effect on the local environment or amenity are necessary, or it has agreed a scheme for such measures.

204. *Paragraph 11* provides for any land used for construction purposes with respect to the scheduled works, where other restoration provisions of the Act do not apply to it, to be restored in accordance with a scheme agreed with the unitary authority. If no scheme is so agreed within 6 months of completion of the scheduled works concerned, the scheme is determined by the appropriate Ministers. This provision applies to both qualifying and non-qualifying unitary authorities.

### **Part 3 – Development not in the area of a unitary authority**

205. *Paragraph 12* establishes Part 3 as the regime to apply to development carried out in non-unitary authority areas (for example, Essex). Responsibility for such development is split between district councils and the county council. The Part therefore provides for conditions which apply to the development for which district councils are responsible and conditions which apply to the development for which the county council is responsible.
206. *Paragraph 13* establishes the circumstances in which the district planning conditions for which the Part provides apply, different conditions applying, in general, according to whether the development is in the area of a non-qualifying district council or qualifying district council. Paragraph 14 and 15 apply do not apply in relation to certain development, referred to in this paragraph as “excepted development”. The development in question is development for which the county council is responsible (and in relation to which the corresponding conditions found in paragraphs 21 and 22 apply).
207. *Paragraph 14* provides for certain matters of detail to be the subject of requests for the approval of the non-qualifying district councils and the only grounds on which they can refuse a request is that the development to which it relates should and could reasonably be carried out elsewhere within Act limits, or that the design or external appearance of any building to which they relate ought to be modified to preserve the local environment or amenity, and is capable of being reasonably modified to do so.
208. *Paragraph 15* provides for certain matters of detail to be the subject of requests for the approval of the qualifying district council and sets out the grounds on which a qualifying district council can refuse a request. The list of operations and works includes construction works, minor constructions works, fences and walls and artificial lighting.
209. *Paragraph 16* sets out construction arrangements over which a qualifying district council shall have some control, including storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.
210. *Paragraphs 17 and 18* provide for a qualifying district council to grant approval before any Crossrail works are brought into use, other than for stations, depots and the tunnelled sections of Crossrail. That approval is to be granted if the council considers that no reasonably practicable measures to mitigate the effect on the local environment or amenity are necessary, or it has agreed a scheme for such measures.
211. *Paragraph 19* provides for any land used for construction purposes with respect to the scheduled works, where other restoration provisions of the Act do not apply to it, to be restored in accordance with a scheme agreed with the district council. If no scheme is so agreed within 6 months of completion of the scheduled works concerned, the scheme is determined by the appropriate Ministers. This provision applies to both qualifying and non-qualifying district councils.
212. *Paragraph 20* establishes the circumstances in which the country planning conditions for which the Part provides apply. The conditions only apply if the county council concerned is a qualifying authority.

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213. *Paragraph 21* sets out the conditions that may be applied to requests for the approval of details in respect of a qualifying county council for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits.
214. *Paragraph 22* sets out construction arrangements over which a qualifying county council shall have some control, including storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.
215. *Paragraph 23* provides that for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits, no disposal or excavation shall commence unless the nominated undertaker has first agreed with the qualifying county council a scheme for the restoration of the land on which the disposal or excavation is to take place. The only ground on which the council can refuse to agree such a scheme is that the scheme ought to be modified, and is reasonably capable of being so modified.
216. *Paragraph 24* provide for a qualifying county council to have some control over the routes by which heavy goods vehicles travel by road to and from working and storage sites, sites where material might be re-used, and waste disposal sites.

#### **Part 4 – Supplementary**

217. *Paragraph 25* provides that the local planning authority is not required to entertain a request for detailed planning permission unless the nominated undertaker has first submitted to that authority a programme of the permissions it intends to seek from the authority in question, and an explanation of how the matters dealt with in the permission sought fit into the wider Crossrail scheme.
218. *Paragraph 26* sets out a process for local planning authorities, where they consider a request for detailed planning permission relates to matters which may affect nature conservation, the conservation of the natural beauty or amenity of the countryside, or a site of archaeological or historic interest, to seek the views of Natural England or the Historic Buildings and Monuments Commission for England (commonly known as English Heritage), as appropriate. Those bodies are to have 21 days to comment on any such request.
219. *Paragraph 27* sets out a similar consultation provision in respect of the Environment Agency.
220. *Paragraphs 28 and 29* set out a mechanism for the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly, to issue directions either restricting a local planning authority's powers under the Schedule, or to "call-in" a particular request for approval under the Schedule.
221. *Paragraphs 30-35* set out a mechanism for the nominated undertaker to appeal decisions by local planning authorities under the Schedule to the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly.
222. *Paragraph 36* empowers the Secretary of State, by order subject to negative resolution, to amend Schedule 7 to allow the Olympic Delivery Authority to become a "qualifying authority" in connection with Crossrail. A qualifying authority is a local planning authority which has given the Secretary of State undertakings concerning the handling of planning applications for Crossrail.

#### ***Schedule 8 – Extension of Permitted Development Rights: supplementary provisions***

223. Section 15 of the Act allows statutory undertakers to rely on their own permitted development rights for works they carry out in relation to Crossrail, provided that the significant impacts of such diversions have been environmentally assessed for the purpose of the project as a whole. However, *Schedule 8* enables the Secretary of

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State to intervene in this process for the purposes of avoiding a breach of a relevant Parliamentary undertaking or securing that the environmental effects of carrying out the development are not materially different from those assessed.

224. *Paragraph 1* provides the power for the Secretary of State to intervene to impose conditions on such development.
225. *Paragraphs 2 and 3* provide a further power for the Secretary of State to intervene in respect of proposed development where he is of the opinion that such development has not been the subject of environmental assessment or where it appears to the Secretary of State that a Parliamentary undertaking may be broken. The effect of this intervention is that the utility developer's deemed planning permission for such works is suspended or liable to revocation.
226. *Paragraphs 4-6* provide a mechanism for notifying the concerned developer and responsible planning authority of the Secretary of State's intervention and the reasons for it.

***Schedule 9 – Heritage: disapplication and modification of controls***

227. *Schedule 9* essentially disapplies the normal heritage protections provided in respect of listed buildings, buildings in conservation areas, and ancient monuments, that might be affected by the Crossrail works. Notwithstanding these disapplications, detailed arrangements were agreed with English Heritage during the passage of the Bill in respect of the relatively small number of such buildings etc likely to be significantly affected.
228. *Paragraph 1* lists in a table the buildings affected, and provides that in relation to the Crossrail works, if a listed building had been listed immediately before 15<sup>th</sup> December 2004 and is specified in the table:
- section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should not apply;
  - to the extent that a notice issued in relation to the building under section 38(1) of that Act requires the taking of steps which would be rendered ineffective or substantially ineffective by works proposed to be carried out in exercise of the powers conferred by the Act, it should not have effect or cease to have effect;
  - no steps may be taken under section 42(1) of that Act which would be rendered ineffective or substantially ineffective by such works and;
  - no works may be executed for the preservation of the building under section 54 of that Act which will be rendered ineffective or substantially ineffective by such works.
229. The same disapplications apply to any building which was not a listed building before 15<sup>th</sup> December 2004 but is listed on or after that date.
230. The table also lists buildings which are situated in a conservation area but are not listed buildings. In relation to these buildings, section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is disapplied with respect to their demolition if the demolition is in exercise of the powers conferred by the Act. A similar disapplication applies in relation to a building within an area which becomes a conservation area on or after 15<sup>th</sup> December 2004.
231. *Paragraph 2* deals with listed buildings which may be affected by settlement. In relation to these buildings similar disapplications as those above apply, save that the disapplication of section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 would only apply to works for the alteration or extension of the building which are carried out in exercise of powers conferred by the Act for the purpose of maintaining or restoring its character as a building of special architectural or historical interest.



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232. *Paragraph 3* provides that section 59 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to anything done in exercise of the powers conferred by the Act with respect to works.
233. *Paragraph 4* modifies the application of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) in respect of Crossrail works:
- section 2 of the 1979 Act does not apply to any works authorised by the Act ;
  - the powers of entry conferred by sections 6(1), 6A(1) and 26 are not to be exercisable in relation to land used for or in connection with the carrying out of such works;
  - the provisions of the 1979 Act with respect to functions of a person as a guardian, and the provisions of any agreement under section 17, are to have effect subject to the powers conferred by the Act with respect to works;
  - section 19 is not to apply in relation to a monument which is closed by the nominated undertaker for the purposes of, in connection with, or in consequence of the carrying out of any of the Crossrail works;
  - regulations under subsection (3) or (4A) of that section are not to apply to the Crossrail works, and the power conferred by subsection (6) of that section is not to be exercisable so as to prevent or restrict the exercise of such powers;
  - in section 25 of the 1979 Act, subsection (2) is not to authorise the superintendence of the carrying out of any of the Crossrail works, and subsection (3) is not to apply in relation to advice given in connection with the carrying out of any of those works;
  - section 28 is not to apply to anything done in exercise of the powers conferred by the Act with respect of works.
  - section 35 is likewise not to apply to operations carried out in the exercise of those powers.
  - section 39(1) is to have effect as if operations carried out in exercise of those powers were exempt operations; and
  - subsection (1) of section 42 is not to apply to the use of a metal detector for the purposes of or in connection with the Crossrail works, and subsection (3) of that section is likewise not to apply to the removal of objects discovered by the use of a metal detector for those purposes.
234. *Paragraph 5* modifies the application of the National Heritage Act 1983 to the Crossrail works. The power of entry conferred by section 36(1) of the 1983 Act is only to be exercisable in relation to land used, or intended for use, for or in connection with the Crossrail works with the consent of a nominated undertaker, such consent not to be unreasonably withheld. Such consent may be given subject to compliance with any reasonable requirements or conditions imposed for reasons of safety or for the purpose of preventing interference with or delay to the works. Any disputes about this are to be determined by the appropriate Ministers unless the parties agree to arbitration. For this purpose the appropriate Ministers means the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport, acting jointly. And subsection (6) of section 36 of the 1983 Act, which regulates the right to enter land for the purposes of record keeping, is not to apply to land on which works authorised by the Act are being carried out.

***Schedule 10 – Heritage: rights of entry***

235. *Schedule 10* seeks to give certain targeted rights of entry to English Heritage, given that their traditional rights of entry are in effect disapplied or qualified by virtue of Schedule 9.

236. *Paragraph 1* provides for anyone authorised by the Historic Buildings and Monuments Commission (“the Commission”) to enter land on which a scheduled monument is situated to inspect, advise and observe as appropriate. Anyone authorised by the Commission may also enter any land in Greater London for the purpose of inspecting or observing the works in respect of any building that would, but for Schedule 9, require listed building consent or conservation area consent. These rights are not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the rights will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.
237. *Paragraph 2* requires the nominated undertaker to give notice to the Commission of any demolition of any building that they would, but for Schedule 9, require listed building consent. At least eight weeks notice is required, longer if agreed with the Commission, though in cases of emergency shorter notice can be given.
238. *Paragraph 3* provides for anyone authorised by the Commission to enter the building concerned to record it in advance of any such demolition. Again, this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

### ***Schedule 11 – Application of other railway legislation***

239. *Paragraph 1* disapplies the Highway (Railway Crossings) Act 1839, as it is not proposed to install level crossings of highways on Crossrail.
240. *Paragraph 2* disapplies section 9 of the Railway Regulation Act 1842 for the same reason.
241. *Paragraph 3* incorporates within the Act the provisions of the Railways Clauses Consolidation Act 1845, so far as applicable for its purposes and not inconsistent with its provisions, with exceptions and modifications.
242. *Paragraph 4* incorporates within the Act the provisions of Part 1 of the Railways Clauses Act 1863, so far as applicable for its purposes and not inconsistent with its provisions. Sections 5 to 7 and 13 to 19 of the 1863 Act are to be excepted from incorporation.
243. *Paragraph 5* disapplies the Railway Companies (Accounts and Returns) Act 1911.
244. *Paragraph 6* applies section 55 and 56 of the British Transport Commission Act 1949 (provisions dealing with trespass on railways and stone throwing) to relevant railway works constructed under the Act .
245. *Paragraph 7* modifies the application to Crossrail of various provisions of railway legislation that create a range of offences (such as failure to pay) so that they apply in a similar way to Crossrail as they do to the railways of Network Rail Infrastructure Limited and to the London Underground system.

### ***Schedule 12 – Transfer schemes***

246. *Parts 1, 2 and 3* set out the powers of the Secretary of State to make schemes for the transfer of property, rights and liabilities (“transfer schemes”) from himself or certain other bodies to any person, including the Secretary of State.

### **Part 1 – Transfers from Cross London Rail Links Limited and its subsidiaries**

247. *Paragraph 1* allows for transfers from Cross London Rail Links Limited (“CLRL”) or any of its subsidiaries. The Secretary of State is required to consult CLRL before making any such scheme.

## **Part 2 – Transfers from the Greater London Authority, Transport for London, the London Development Agency and their subsidiaries**

248. *Paragraph 2* allows for transfers from the Greater London Authority, the London Development Agency or Transport for London or any of their subsidiaries. The Secretary of State may exercise this power only for the purposes connected with Crossrail and only with the consent of the transferor.

## **Part 3 – Transfers from the Secretary of State and companies owned by Secretary of State**

249. *Paragraph 3* allows for transfers from the Secretary of State, or a company wholly owned by him, as defined, to anyone else. The transfer must be for purposes connected with Crossrail. By virtue of *paragraph 4*, transfer schemes can also be used to enable the simple grant of new land interests to happen by way of a transfer scheme where this occurs independently of any broader transfer.

## **Part 4 – General provisions about transfer schemes**

250. *Paragraph 5* specifies certain types of property, rights and liabilities that may be included in a transfer scheme.
251. *Paragraph 6* provides that where property is transferred by transfer scheme new interests, or rights may be created in relation to that property in favour of the person from whom it has been transferred. Conversely, new interests and rights may be created in favour of the person to whom property has been transferred in relation to property that has been retained or transferred to another party. Transfer schemes may also create rights and liabilities between parties affected by a transfer scheme.
252. *Paragraph 7* provides that what is transferred by, or retained following, a transfer scheme may be named specifically or simply described.
253. *Paragraph 8* allows for a transfer scheme to make provision for contraventions of any terms applicable to the things transferred to be treated as not occurring. This will allow for the transfer of property, rights or liabilities that would otherwise not be transferable.
254. *Paragraph 9* provides for the transfer of shares in a subsidiary of the transferor not to be subject to any terms in relation to the transfer of those shares.
255. *Paragraphs 10 and 11* provide that a transfer scheme may modify the interests, rights and liabilities of third parties in relation to the things to be transferred.
256. *Paragraph 12* provides that a transfer scheme may impose obligations on the person to whom or from whom things are transferred to enter into agreements with and to execute instruments in favour of any other person specified in the scheme.
257. *Paragraph 13* provides for transfer schemes to contain supplementary provisions.
258. *Paragraph 14* provides for a transfer scheme to have effect at the time or times set out in the scheme.
259. *Paragraph 15* allows for a transfer scheme to be modified if the parties to it, or certain other parties, agree. Modifications can have effect from the date of the scheme, or later.
260. *Paragraph 16* provides for continuity of employment for employees who transfer as a part of any transfer scheme.
261. *Paragraphs 17 and 18* allow the Secretary of State to issue a direction requiring information to be provided by the relevant parties to enable him to make a transfer scheme, require that a direction must set out the a timescale for responding of no more than 28 days and describe what happens if the parties to whom a direction is given do not respond.

262. *Paragraph 19* would enable the Secretary of State to agree, in advance of making a transfer scheme, whether and in what circumstances she would make a transfer scheme under Schedule 12.

***Schedule 13 – Transfer schemes : tax provisions (tax provisions relating to transfer schemes)***

263. This Schedule makes provision relating to tax consequences that could otherwise arise in relation to the transfers of property, rights and liabilities under transfer schemes made under Schedule 12. Broadly, it ensures that inappropriate tax charges and reliefs are not triggered solely as a result of a transfer scheme and provides continuity of tax treatment, where appropriate. References below to “transferors” and “transferees” are with reference to transfer schemes made under Schedule 12.
264. *Paragraph 1* defines the meaning of “public body” for the purposes of the Schedule and adopts the Stamp Duty Land Tax definition in section 66 of the Finance Act 2003.
265. *Paragraph 2* defines the meaning of “taxable public body” and “exempt public body” for the purposes of the Schedule.
266. *Paragraph 3* contains supplementary provision on interpretation.
267. *Part 2 of the Schedule (Paragraphs 4 – 16)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers between taxable public bodies of property, rights and liabilities which happen under transfer schemes.
268. *Paragraph 4* defines the meaning of a “relevant transfer” for the purposes of Part 2.
269. *Paragraph 5* provides for continuity in the treatment of the computation of profits and losses of a trade where the transferor ceases to carry on that trade and the transferee begins to carry on the trade, or part of it.
270. *Paragraph 6* applies where trading stock of the transferor is transferred to the transferee but the transferee does not succeed to the transferor’s trade, or part of it. For corporation tax purposes the stock is treated as being disposed of for an amount that would result in no profit or loss being brought into account for the transferor.
271. *Paragraph 7* provides for continuity of treatment for capital allowances where the transferor ceases to carry on a trade and the transferee begins to carry on that trade.
272. *Paragraph 8* provides that where the trade transferred is carried on as part of the trade of the successor, or the successor carries on part of the trade, that part is to be treated as a separate trade for the purposes of paragraph 7.
273. *Paragraph 9* applies to transfers of plant and machinery where these are not transferred with a trade. This paragraph ensures that the disposal value to be brought into account for the transferor, and the amount of capital expenditure regarded as incurred by the transferee, is the value of the plant and machinery, or fixture, specified in, or determined in accordance with, the transfer scheme.
274. *Paragraph 10* provides that a transfer of an industrial building will not be treated as a sale in order that there is continuity of treatment for industrial building allowance.
275. *Paragraph 11* determines that for capital gains purposes, the disposal value and acquisition cost of an asset transferred is the amount that would result in no gain or loss accruing to the transferor.
276. *Paragraph 12* ensures continuity of treatment where a depreciating asset is transferred and a held-over gain would otherwise crystallise.
277. *Paragraph 13* ensures continuity of treatment for transfers of intangible assets by treating a relevant transfer of a chargeable intangible asset as a “tax-neutral transfer”

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and preserving the status of an intangible asset that was an “existing asset” in the hands of the transferor.

278. *Paragraph 14* ensures continuity of treatment for loan relationships in relation to a relevant transfer by treating the transferor and transferee as members of the same group at the time of the transfer.
279. *Paragraph 15* ensures continuity of treatment for derivative contracts in relation to a relevant transfer by treating the transferor and transferee as members of the same group at the time of the transfer.
280. *Paragraph 16* ensures that no deemed charge arises for the transfer of certain leased assets and provides continuity of treatment for certain leased assets.
281. *Part 3 of the Schedule (paragraphs 17- 25)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers from taxable public bodies to exempt public bodies of property, rights and liabilities under transfer schemes.
282. *Paragraph 17* defines the meaning of a “relevant transfer” for the purposes of Part 3.
283. *Paragraph 18* ensures that, for the purpose of computing the profits of the transferor’s trade, the disposal value of any trading stock transferred is the actual consideration, if any, given to the transferor, or a person connected with the transferor.
284. *Paragraph 19* determines the disposal value of plant and machinery for capital allowance purposes. The disposal value is the capital sum, if any, received by the transferor, or a person connected with the transferor.
285. *Paragraph 20* determines the disposal value of a fixture for capital allowance purposes. The disposal value is that portion of the capital sum, if any, received by the transferor or a person connected with the transferor, that would be treated as expenditure incurred by the transferee on the fixture if the transferee was entitled to an allowance.
286. *Paragraph 21* determines that the transfer of an industrial building is to be treated as a sale for industrial building allowance purposes and that the sale proceeds are the capital sum, if any, received by the transferor, or a person connected with the transferor. This paragraph is subject to section 36 of the Finance Act 2007. In practice this means that a balancing adjustment would only be computed where qualifying enterprise zone expenditure had been allowed in respect of the building transferred.
287. *Paragraph 22* determines that the disposal value, for capital gains purposes, of an asset transferred is the amount that would result in no gain or loss accruing to the transferor.
288. *Paragraph 23* provides that the transfer of a chargeable intangible asset should not be treated as involving any realisation of the asset by the transferor with the effect that no gain or loss would arise for corporation tax purposes.
289. *Paragraph 24* provides that no credit or debit shall be brought into account for a relevant transfer for the purposes of the loan relationships and derivative contracts rules with the effect that no profit or loss would arise for corporation tax purposes.
290. *Paragraph 25* ensures that no deemed charge arises for the transfer of certain leased assets.
291. *Part 4 of the Schedule (paragraphs 26 – 28)* contains provisions about the corporation tax treatment of taxable public bodies relating to transfers from exempt public bodies to taxable public bodies of property, rights and liabilities under transfer schemes.
292. *Paragraph 26* defines the meaning of a “relevant transfer” for the purposes of Part 4.
293. *Paragraph 27* deems the transferee to have incurred capital expenditure on plant and machinery, or fixtures, for capital allowances purposes. It also determines that the

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amount of the capital expenditure regarded as incurred by the transferee is the value specified in, or determined in accordance with, the transfer scheme.

294. *Paragraph 28* determines the amount that is to be taken as the residue of qualifying expenditure for industrial buildings allowance purposes.
295. *Part 5 of the Schedule (paragraphs 29 – 32)* contains other provisions relating to transfers between public bodies of property, rights and liabilities under transfer schemes.
296. *Paragraph 29* defines the meaning of a “relevant transfer” for the purposes of Part 5.
297. *Paragraph 30* ensures that a relevant transfer of all of the issued share capital of a company would not trigger restrictions in sections 768 – 768E of the Income and Corporation Taxes Act 1988 which could otherwise apply on a change of ownership of a subsidiary company.
298. *Paragraph 31* ensures that a degrouping charge in section 179 of the Taxation of Chargeable Gains Act 1992 which could otherwise apply where a company ceases to be a member of a group, shall not apply where that company becomes a member of another group as the result of a transfer.
299. *Paragraph 32* ensures that no stamp duty liability arises on a transfer scheme where the transferor and each transferee is a public body, or on an instrument made for the purposes of, or in connection with, a transfer scheme where the Secretary of State certifies this to be the case.
300. *Part 6 of the Schedule (paragraphs 33 – 40)* contains provisions relating to transfers of property, rights and liabilities under transfer schemes involving persons other than a public body.
301. *Paragraph 33* defines the meaning of a “relevant transfer” for the purposes of Part 6.
302. *Paragraph 34* provides that for the purpose of computing the profits of the transferor’s trade the value of trading stock transferred is the actual consideration, if any, given to the transferor, or a person connected with the transferor. Where the trading stock immediately becomes trading stock of the transferee the same value is to be taken into account in computing the profits of the transferee’s trade. Similarly where the transferee acquires the stock other than as trading stock of its trade the transferee is treated as giving consideration for the stock equal to the actual consideration given, if any.
303. *Paragraph 35* determines the disposal value of plant and machinery for capital allowance purposes. The disposal value is the capital sum, if any, received by the transferor, or a person connected with the transferor.
304. *Paragraph 36* determines the disposal value of a fixture for capital allowance purposes. The disposal value is that portion of the capital sum, if any, received by the transferor or a person connected with the transferor, which falls to be treated as expenditure incurred by the transferee on the provision of the fixture (or would be if the transferee was entitled to an allowance).
305. *Paragraph 37* provides that section 265 of the Capital Allowances Act 2001 shall not apply to a relevant transfer in relation to the transferee. Paragraphs 35 and 36 already override section 265 in the case of the transferor so that the transfer would not be treated as a succession in the case of the transferor. Paragraph 37 makes it clear that this is also the case for the transferee.
306. *Paragraph 38* determines that the transfer of an industrial building is to be treated as a sale for industrial building allowance purposes and that the sale proceeds are the capital sum, if any, received by the transferor, or a person connected with the transferor. This paragraph is subject to section 36 of the Finance Act 2007. In practice this means

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that a balancing adjustment would only be computed where qualifying enterprise zone expenditure had been allowed in respect of the building transferred.

307. *Paragraph 39* provides that, unless the parties are connected persons, a relevant transfer is not to be treated as made at market value for chargeable gains purposes, and determines that the disposal and acquisition value is the actual consideration given, if any, by the acquirer, or on his behalf, for the asset.
308. *Paragraph 40* ensures that a relevant transfer would not be treated as made at market value for loan relationships purposes.
309. *Part 7 of the Schedule (paragraphs 41 – 46)* contains other provisions relating to transfers of property, rights and liabilities under transfer schemes.
310. *Paragraph 41* ensures that a transfer scheme is not treated as a scheme or arrangement that would trigger value shifting rules in section 30 of the Taxation of Chargeable Gains Act 1992.
311. *Paragraph 42* ensures that the power of the Secretary of State to make a transfer scheme would not constitute “arrangements” within the meaning of section 410 of the Income and Corporation Taxes Act 1988 or “option arrangements” for the purposes of paragraph 5B of Schedule 18 to that Act.
312. *Paragraph 43* provides for the situations where a transfer scheme is modified, or a determination is made or modified under paragraph 9(1)(d) or 27(1)(c), subsequent to the delivery of a company return causing the company’s return to be incorrect. It enables the company to amend its return to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the accounting period in which the change occurred. Where the company does not do so HMRC may make a discovery assessment or determination within 24 months of the end of the accounting period in which the change occurred (notwithstanding any normal time limit).
313. *Paragraph 44* provides for the situation where a transfer scheme is modified subsequent to the delivery of a personal, trustee or partnership return causing the return to be incorrect. It enables the person who is responsible for the return to amend it to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the year of assessment in which the change occurred. In the case of a partnership return it also ensures that HMRC can amend the partners’ returns (notwithstanding any normal time limit). Where a return is not amended HMRC may make appropriate assessments within 24 months of the end of the year of assessment in which the change occurred (notwithstanding any normal time limit).
314. *Paragraph 45* gives the Treasury power to make regulations, subject to negative procedure in the House of Commons, varying the way in which a relevant tax has effect in relation to any property, rights or liabilities transferred in accordance with a transfer scheme or anything done for the purposes of, in relation to, or as a consequence of a transfer. A “relevant tax” for this purpose is income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax. This means that amended, or further amended, tax provision can be provided for transfers under Schedule 12 to the Act, if necessary.
315. *Paragraph 46* makes a consequential amendment in section 35(3)(d) of the Taxation of Chargeable Gains Act 1992.

***Schedule 14 - Disapplication and modification of miscellaneous controls***

316. *Schedule 14* disapplies or modifies a number of provisions in existing legislation where these are contradictory to the exercise of the powers sought for Crossrail or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

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317. *Paragraph 1* provides that no obligation or restriction imposed under ecclesiastical law or in relation to consecrated land shall impose any restriction on the powers conferred by the Act .
318. *Paragraph 2* disapplies the London Overground Wires etc Act 1933 and any bye-law made under it, in respect of any wire or part of a wire erected or maintained as part of the Crossrail works.
319. *Paragraph 3* essentially disapplies sections 3 and 9 of the London Squares Preservation Act 1931 in respect of the Crossrail works. Works are to be carried out under, and use is to be made of, Hanover Square and Finsbury Circus, and this requires disapplications of relevant restrictions in the 1931 Act.
320. *Paragraph 4* disapplies parts of the London Buildings Acts (Amendment) Act 1939 with respect to anything held in connection with Crossrail by the Secretary of State or the nominated undertaker. The 1939 Act contains an exemption for certain buildings or structures belonging to a railway company and situated on a railway or within a railway or station premises. As land acquisition powers in the Act are vested in the Secretary of State, this disapplication is required so that a similar exemption applies to Crossrail.
321. *Paragraph 5* disapplies section 34(1) of the Coast Protection Act 1949 in respect of Crossrail works, as it would require the prior consent of the Secretary of State to be obtained before the carrying out of any works affecting navigable waters (which includes the River Thames).
322. *Paragraph 6* modifies the application of various provisions of the Port of London Act 1968 in respect of the Crossrail works. These provisions would require licences to be obtained before certain works may be carried out and would preclude the carrying out of dredging operations or certain other operations affecting the bed or bank of the River Thames. The Port of London Authority will benefit from protective provisions set out in Part 6 of Schedule 17.
323. *Paragraph 7* modifies the application of various pieces of highways legislation that would require consent to be obtained before certain works (such as erecting scaffolding, the planting of trees or shrub in or near a highway, or the placing of a retaining wall near a highway etc) can be carried out.
324. *Paragraph 8* disapplies Part 1 of the Building Act 1984 with respect to building regulations, and building regulations in relation to certain buildings held in connection with Crossrail by the Secretary of State or the nominated undertaker. The 1984 Act contains an exemption for buildings belonging to a statutory undertaker. As land acquisition powers in the Act are vested in the Secretary of State, this disapplication is required so that a similar exemption applies in relation to Crossrail.
325. *Paragraph 9* disapplies section 5 of the Food and Environment Protection Act 1985 in respect of Crossrail works. That section would require a licence to be obtained from the Secretary of State before certain deposits in the sea (which includes the River Thames) are made.
326. *Paragraphs 10 to 12* modify the application of the London Lorry Ban Order (“the Order”) in respect of Crossrail works. Given that the routing of large goods vehicles is intended to be one of the areas of control that qualifying planning authorities will have under the planning regime established under the Act, paragraphs 10 to 12 restrict the right to refuse or condition a permit under the Order, with disputes to be settled by the Secretary of State. They also make provision for the grant of emergency permits, in the case where a permit is required within eight working days of application.
327. *Paragraph 13* disapplies various provisions of the Greater London Council (General Powers) Act 1986 concerning the doing of things under a street in respect of the Crossrail works. This is because the 1986 Act would otherwise require the consent of



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the relevant London borough to the demolition of a building or other structure under a street, and to other associated works.

- 328. *Paragraph 14* modifies the application of the New Roads and Street Works Act 1991 to the Crossrail works, as the 1991 Act contains a number of provisions which would otherwise restrict the ability of the nominated undertaker to carry out works in the street.
- 329. *Paragraph 15* disapplies the requirement to obtain an abstraction licence under the Water Resources Act 1991 in relation to the abstraction of water in connection with the construction of Crossrail. Part 3 of Schedule 17 provides alternative protection under the supervision of the Environment Agency.
- 330. *Paragraph 16* applies the national rules rather than Greater London rules to the making of connections to public sewers for the drainage of Crossrail.
- 331. *Paragraph 17* disapplies various provisions of the Party Wall etc Act 1996 in respect of the Crossrail works. This removes the need for the nominated undertaker to issue a notice to an adjoining landowner before constructing certain walls and fences, or to secure the consent of that landowner before carrying out any excavation or erection, and ensures that an adjoining landowner has no right over any Crossrail works.

***Schedule 15 - Burial grounds: removal of human remains and monuments***

- 332. *Paragraph 1* requires the nominated undertaker to publish and display notice of his intent to remove any human remains or monument before any such removal, and sets out what such a notice should include. No notice is to be required in cases where the Secretary of State has notified the nominated undertaker that he is satisfied that the remains are more than a hundred years old, and that no relative or representative of the deceased is likely to object. Nor is a notice to be required in cases where the nominated undertaker already holds a licence to remove human remains under section 25 of the Burial Act 1857.
- 333. *Paragraph 2* sets out the circumstances in which the nominated undertaker may issue a licence, allowing for the removal and reinterment or cremation of human remains, to a relative or representative of the deceased, upon written request. The reasonable costs of removal and reinterment or cremation will be paid by the nominated undertaker.
- 334. *Paragraph 3* allows the nominated undertaker to remove human remains where no written request by a relative or representative is received, or where a licence has been issued but the remains have not been removed after 28 days. Such remains are to be reinterred in a burial ground or cremated in a crematorium.
- 335. *Paragraph 4* sets out the arrangements to apply to the removal of any monument associated with any human remains removed under the Schedule. Where a licence has been issued, the relative or representative of the deceased may also remove the monument associated with it, to re-erect it elsewhere or to dispose of it. The reasonable costs of so doing will be paid by the nominated undertaker.
- 336. *Paragraph 5* allows the nominated undertaker to remove any monument associated with any human remains he removes, or, where a licence has been granted, a monument has not been removed within 28 days. The nominated undertaker can also remove any monument associated with any human remains the subject of a licence held under the Burial Act 1857. Monuments removed may be re-erected where the remains are re-interred, or at some other appropriate place, or, failing that, are to be broken up and defaced.
- 337. *Paragraph 6* sets out the records required to be kept by the nominated undertaker in respect of any human remains or monuments removed under the Schedule.

### ***Schedule 16 – Reinstatement of discontinued facilities***

338. *Schedule 16* provides that the nominated undertaker may reinstate facilities, the use of which has been discontinued as a consequence of Crossrail construction. This reinstatement may be on the original site or elsewhere within Act limits.
339. *Paragraph 1* provides this power of reinstatement which may also be used to reinstate facilities temporarily and to thereafter reinstate permanently.
340. *Paragraph 2* provides that the deemed planning permission for such reinstatement, as provided for under the Act, may be made subject to conditions imposed at the direction of the Secretary of State. Paragraph 2 makes provision for the regime associated with any such conditions.

### ***Schedule 17 - Protective provisions***

341. *Schedule 17* contains provisions setting out the protections to be provided for various bodies likely to be affected by the works.

### **Part 1 – Protection for highways and traffic**

342. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the highway authority concerned agree to vary them. The bodies for which this protection applies include all the highway authorities for highways in which the powers of the Act can be exercised (i.e. both the local highway authorities (local authorities and Transport for London) and, in respect of trunk roads, the Secretary of State). The arrangements set out here are in addition to the protection given to such authorities in Schedules 2 and 3 to the Act (for example, the right to approve temporary closures, the creation of new accesses, and the construction of new or altered streets).
343. These arrangements will apply instead of arrangements which normally govern street works under Part 3 of the New Roads and Street Works Act 1991 (except that by virtue of paragraph 14(2) the regulations which govern reinstatement of streets under that Act will apply to reinstatement of highways under the powers of this Act).
344. *Paragraph 3* imposes a general obligation to minimise disruption to traffic. This will apply to the nominated undertaker in relation to powers to stop up streets and to construct works.
345. *Paragraphs 4, 5 and 7* address works constructed under highways. Approval of plans by the highway authorities is required for works within 8 metres of the surface, and their consent is required for works which interfere with drainage or are within 2 metres of the surface. By virtue of paragraph 2 any consent or approval under these or any other provisions of this Part is not to be unreasonably withheld. In addition such works must be designed, constructed and maintained to carry the appropriate loading recommended for highway bridges.
346. *Paragraph 6* applies to works involving bridges. Approval of plans is required if there is any interference with a highway and controls are imposed over the way that the works are constructed.
347. *Paragraph 8* gives the highway authorities a right of access to inspect the construction of the works and paragraphs 9 to 16 contain miscellaneous provisions governing the way that works are constructed in highways, together with provision for reinstating streets after completion of the work, making good damage caused to highways and street furniture, and providing for reimbursement of costs incurred by highway authorities in connection with road diversions required for the works.
348. *Paragraph 18* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by

the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

## **Part 2 – Protection for electricity, gas, water and sewerage undertakers**

349. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State’s powers under the Act to acquire land) and the undertakers concerned agree to vary them. The undertakers which enjoy the benefit of these provisions are bodies holding licences under the Electricity Act 1989, licensed gas transporters under the Gas Act 1989, and licensed water and sewerage undertakers under the Water Industry Act 1991. Local authorities exercising sewerage functions under arrangements with the local sewerage undertaker under section 97 of the Water Industry Act are also protected.
350. The protection extends to the bodies in relation to apparatus belonging to or maintained by them for the purpose of their undertaking. However the arrangements will not generally apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (which establishes a nation-wide regime governing street works). Accordingly that Act and the regulations and codes of practice made under it (in particular the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and the Code of Practice “Measures necessary where apparatus is affected by major works (diversionary works)”) will apply to the undertakers’ apparatus in streets.
351. *Paragraph 2* sets out the general principle that apparatus is not to be moved under the powers of the Act until replacement apparatus has been provided and is in operation. This principle applies except in exceptional circumstances where a certificate is issued by the appropriate Ministers allowing this requirement to be dispensed with. The appropriate Ministers are the Secretary for State for Transport acting jointly with the Secretary of State for Environment, Food and Rural Affairs in relation to water and sewerage undertakers and the Secretary of State for Business, Enterprise and Regulatory Reform in relation to other undertakers.
352. *Paragraphs 3 to 7* set out a procedure for dealing with diversion of apparatus (which can be required by either the nominated undertaker or the undertaker concerned) in consequence of the Crossrail works. This requires the nominated undertaker or the Secretary of State to provide rights and facilities for the replacement apparatus when it is able to do so, but otherwise the undertaker is required to use its best endeavours to obtain these. The terms relating to any such replacement apparatus are to be agreed or otherwise determined in accordance with the disputes procedure under paragraph 13.
353. *Paragraph 8* applies to apparatus which is not proposed to be removed: the nominated undertaker is to provide plans of the proposed works near to the apparatus and the undertaker can require protective measures to be undertaken, or require its removal (in which case the procedures under paragraphs 3 to 7 are to apply).
354. *Paragraphs 9 and 10* are intended to protect continued access to apparatus. In particular they provide that the undertaker is to continue to enjoy the same rights for the purpose of maintaining apparatus in streets which have been permanently stopped up under the powers of the Act .
355. *Paragraph 11* provides for reimbursement of the undertakers’ cost in connection with the diversion or protection of its apparatus (or arising from the cutting off of apparatus) and paragraph 12 provides an indemnity in respect of damage to apparatus or interruption to the undertakers service, caused by the construction of the works. This

indemnity includes provision for reasonable compensation for any losses suffered by the undertaker.

356. *Paragraph 13* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by those Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes.

### **Part 3 – Protection of land drainage, flood defence, water resources and fisheries**

357. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the Environment Agency (“the Agency”) agree to vary them. The Agency is the body established under the Environment Act 1995 which has statutory responsibility for flood defence and land drainage, water resources and fisheries. By virtue of the definitions in this paragraph these arrangements apply to protect watercourses (except public sewers) and any drainage work, which is defined as a watercourse, including any flood plain, or any land drainage, flood defence or tidal monitoring work. The provisions apply to any specified work, defined as any work or operation authorised by the Act which is likely to affect any drainage work or the flow, purity or quality of water in a watercourse or other surface waters or ground water to cause obstruction to fish or damage to any fishery, or affect conservation, distribution or use of water resources.
358. *Paragraphs 2 and 3* provide for the Agency to approve plans of any specified works and in approving plans to be able to make reasonable requirements (including requiring the nominated undertaker to construct protective works at its own cost). Approval of plans under these provisions is not to be unreasonably withheld.
359. *Paragraph 4* deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Agency’s reasonable satisfaction, for the Agency to have the right to inspect the construction and to require alteration or removal of the works where they have not been constructed in accordance with the requirements of this Part.
360. *Paragraph 5* provides for the flood defence works constructed under the powers of the Act to be maintained to the reasonable satisfaction of the Agency and paragraph 6 requires the nominated undertaker to make good any impairment to the efficiency of drainage works for flood defence purposes or any other damage.
361. *Paragraph 7* requires the nominated undertaker to take all reasonably practicable measures to prevent interruption of the free passage of fish in any fishery and contains provision for the nominated undertaker to prevent or make good damage to fisheries (a fishery is defined as any waters containing fish and the fish within or migrating to or from such waters and the spawn, spawning grounds or food of such fish).
362. *Paragraph 8* contains a general indemnity for the Agency in respect of claims against it arising from the construction of the specified works in respect of the Agency’s functions protected by this Part.
363. *Paragraph 11* avoids duplication of consents by providing that an approval or consent given under this Part is to be treated as a consent for the purpose of the various provisions listed in that paragraph. Section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 would otherwise require consent for the execution of flood works in River Thames, section 109 of the Water Resources Act 1991 would require approval of structures in, over or under watercourses and Part 2 of the Water Resources Act would require a licence for impounding of water. It also

disapplies the requirement under section 30 of that Act to give notice of proposals to construct boreholes for abstraction of water in connection with underground works.

364. *Paragraph 12* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the appropriate Ministers to be involved in the resolution of such disputes.

#### **Part 4 – Protection of electronic communications code networks**

365. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the operators concerned agree to vary them. The operators to whom these provisions apply are operators of an electric communications code network as defined in the Communications Act 2003.
366. The electronic communications code is the code set out in Schedule 2 to the Telecommunications Act 1984, and an electric communications code network is so much of an electric communications network or conduit system provided by an electronic communications code operator, (i.e. a person to whom the code is applied by a direction of the Secretary of State under the Communications Act) as is not excluded from the application of the code by such a direction.
367. The protection conferred by this Part applies to any works authorised by the Act (“the authorised works”).
368. *Paragraph 2* clarifies the relation between the operation of the electronic communications code, Part 3 of the New Roads and Street Works Act 1991 (which regulates street works) and section 272 of the Town and Planning Act 1990 (which addresses removal of apparatus in land which has been compulsorily acquired).
369. Paragraph 23 of the electronic communications code (which imposes a procedure for the alteration of telecommunications apparatus by statutory undertakers) is to apply for the purpose of the authorised works excepted where those purposes are regulated by or under the New Roads and Streets Works Act 1991 (i.e. where the apparatus is in a street), or where the nominated undertaker has a right to remove telecommunications apparatus by virtue of the default powers contained in section 272 of the Town and Country Planning Act 1990 or in relation to removal of apparatus in streets stopped up under the powers of the Act (which is addressed in paragraphs (3) to (8) of paragraph 4 of this Part). Paragraph 21 of the electronic communications code (which restricts other persons’ rights to require the removal of electronic communications apparatus) is excluded in the same circumstances.
370. *Paragraph 3* provides that the powers of Part 1 of the Act for the temporary stopping up or diversion of highways are not to affect the statutory rights of operators to use that street for the purpose of installing or maintaining apparatus.
371. *Paragraph 4* protects operators’ rights of access to apparatus in streets which have been permanently stopped up under the powers of the Act , but this protection is subject to the nominated undertaker’s rights to require the removal of that apparatus or to alter it.
372. The nominated undertaker is required to give notice of the proposed stopping up and the operator has a right, and where reasonably requested by the nominated undertaker, an obligation, to move its apparatus. There is provision for the undertaker to recover its costs but sub-paragraph (8) provides that the provisions of this part dealing with the recovery of costs for relocation works are not to apply where the relocation is

required as a result of works which are major transport works or major highway works for the purpose of Part 3 of the New Roads and Street Works Act 1991. In such a case the cost sharing regime provided for under that Act will govern recovery of costs and consequently the amount recoverable will be discounted by such amount as is prescribed from time to time under the cost-sharing regulations made under section 85 of that Act (the amount is currently 18% or 7.5% depending on the nature of the works).

373. *Paragraph 5* provides an indemnity for operators in respect of damage to apparatus or interruptions to the supply of its services caused by the construction of the authorised works (or by subsidence resulting from those works). This does not apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (i.e. works in streets).
374. *Paragraph 6* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes.

## **Part 5 – Protection of British Waterways Board**

375. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State’s powers under the Act to acquire land) and the British Waterways Board (“the Board”) agree to vary them. The Board is a public corporation established under the Transport Act 1962 which owns and manages a network of waterways, comprising canal and river navigations, reservoirs and docks. A number of its waterways may be affected by the powers of the Act, including in particular, the river Lea, the Grand Union and Regents Canals and the West India Dock. These arrangements apply to “canals” which means any canal or waterway owned or managed by the Board, including land held or used for the canal (such as towing paths). The nominated undertaker’s works to which the provisions apply are any “specified works” defined as works in, across, under or within 15 metres of, or which may affect, any canal.
376. *Paragraph 2* makes clear that in relation to land of the Board, the compulsory powers of the Secretary of State to acquire land will be limited to “what is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works” authorised by the Act.
377. *Paragraph 3* provides for the Board to approve plans of the specified works and in approving plans to be able to make reasonable requirements in relation to its canals. Such approval is not to be unreasonably withheld.
378. *Paragraph 4* deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Board’s reasonable satisfaction and with minimum disruption to traffic on the canals, for the Board to have advance notice of commencement of construction and the right to inspect the construction work.
379. *Paragraphs 5 and 6* deal with deposits of materials on, in or over canals and discharge of water into canals. These operations will require the Board’s consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to the Act to discharge water into watercourses is made subject, in relation to canals, to the terms of any consent given under these provisions.
380. *Paragraph 7* provides protection for access to or along towing paths. If this is temporarily obstructed and there is no alternative means of access, the nominated

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undertaker is required (so far as is reasonably practicable) to provide a substitute. These requirements are in addition to the obligation in paragraph 5(2) and (5) of Schedule 3 to ensure reasonable pedestrian access to premises adjoining a highway which has been temporarily stopped up and to obtain the consent of the highway authority for such closures.

381. *Paragraph 8* contains provision empowering the Board to give the nominated undertaker notice to act in circumstances where canal work is abandoned or is in such a condition that it does or may constitute a danger or interference with navigation. The Board may carry out remedial works at the nominated undertaker's expense in the event of default by the nominated undertaker.
382. *Paragraph 9* contains a general indemnity for the Board in respect of claims against it arising from damage to canals covered by the works and for the costs of making good such damage.
383. *Paragraph 11* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the appropriate Ministers to be involved in the resolution of such disputes.

## **Part 6 – Protection of Port of London Authority**

384. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the Port of London Authority (“the PLA”) agree to vary them. The PLA is the statutory harbour authority for the Port of London under the Port of London Act 1968. The nominated undertaker's works to which the provisions apply are any “specified works” defined as works on, in, under or over the surface of land below the river (defined as the level of mean high water springs forming part of waters within the PLA's jurisdiction) or any land owned, occupied or used by the PLA for operational purposes.
385. *Paragraph 2* provides for the PLA to approve plans of the specified works, and in approving the plans to be able to make reasonable requirements in relation to the protection of the river or the use of its operational land for the purpose of performing its statutory functions. PLA's approval is not to be unreasonably withheld, and the paragraph also makes clear that the requirement for approval of plans does not reintroduce the controls under Part 5 of the Port of London Act 1968 (relating to works and dredging in the Thames) which are disapplied by Schedule 14 to the Act.
386. *Paragraph 3* deals with the construction of the specified works. It provides in particular for these to be constructed with all reasonable dispatch and to the PLA's reasonable satisfaction and with minimum interference to navigation in the river and the PLA's statutory functions. The PLA is entitled, on notice to the nominated undertaker, to inspect and survey the construction of the specified works.
387. *Paragraph 4* deals with the deposit of gravel, soil or other material into the river, including allowing any such material to fall, or be washed into the river. Any such deposit will require the PLA's consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to the Act to discharge water into watercourses is made subject, in relation to the river, to the terms of any consent given under these provisions. This paragraph also spells out that it is not to be taken as authorising anything which would be an offence under the legislation dealing with the pollution of water.

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388. *Paragraphs 5, 6 and 7* contain miscellaneous protection in relation to construction of the specified works including requirements for removing obstructions to navigation which are exposed in the course of the works, provision for reimbursement of costs incurred by the PLA in addressing impacts on existing moorings and a requirement to provide lights or buoys or take other steps as may be required by the PLA for the prevention of danger to navigation.
389. *Paragraph 8* is intended to secure navigational safety in a case where a specified work is abandoned or falls into disrepair. The PLA is entitled to require the nominated undertaker to remove the work, or repair it, and restore the site to its former condition.
390. *Paragraph 9* applies the prohibition in paragraph 8(4) of Schedule 2 against the damage of the bed or banks of watercourses forming parts of a main river to any discharge of any water in connection with a specified work and affecting part of the river that is not a main river.
391. *Paragraph 10* provides that the powers under the Act to navigate or moor barges, vessels or craft are subject to such directions as the PLA's harbour master may make.
392. *Paragraphs 11 and 12* make provision for the indemnity of the PLA, by the nominated undertaker, for damage caused to the bed or banks of the river. This liability is limited where the damage is attributable to the PLA.
393. *Paragraph 13* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of section 54 of the Act). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

## **TERRITORIAL EXTENT**

394. The Act does not expressly limit the Act's territorial extent. The land and works provisions are by nature local. The provisions under the heading "Railway matters", on the other hand, relate to matters which are the subject of a common regime under the law of England and Wales and Scotland and extend accordingly.

## **COMMENCEMENT**

395. The provisions of the Act came into force on Royal Assent.

**Department for Transport  
July 2008**

## **KEY DATES**

22 February 2005	Bill introduced in the House of Commons and receives First Reading
10 March 2005	Examiners (both Houses)
17 March 2005	House of Commons Standing Orders Committee
22 March 2005	House of Lords Standing Orders Committee
7 April 2005	House of Commons and House of Lords carry-over motion debates
<i>7 April 2005 Parliament prorogued for General Election</i>	



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<i>5 May 2005 General Election</i>	
<i>17 May 2005 Queen's Speech</i>	
18 May 2005	Bill re-introduced
26 May 2005	Publication of (first) Supplementary Environmental Statement
<i>26 May 2005 – 6 June 2005 Whit Recess</i>	
19 July 2005	House of Commons Second Reading and instruction to Select Committee
19 July 2005	Motion to amend House of Commons Standing Order 209 (to allow the Private Bill Office to be open for longer hours during the Recess) approved during Private Business
<i>21 July 2005 – 10 October 2005 Summer Recess</i>	
16 September 2005	End of petitioning period
30 November 2005	Committee of Selection
<i>20 December 2005 – 9 January 2006: Christmas Recess</i>	
12 January 2006	Debate on instructions relating to Additional Provisions 1 & 2
17 January 2006	Start of Commons Select Committee
25 July 2006	Commons Select Committee Interim Decisions
11 October 2006	Promoter's Response to Interim Decisions
24 October 2007	Committee suspends hearings
30 October 2006	Commons Select Committee report on Woolwich Station
31 October 2006	Commons debate on instructions relating to Additional Provision 3 and Carry Over Motion
6 November 2006	Debate on Lords Carry-Over Motion
7 November 2006	Deposit of Additional Provision 3 and Supplementary Environmental Statement 3
<i>8 November 2006 Prorogation</i>	
<i>15 November 2006 Queen's Speech</i>	
16 November 2006	Bill re-introduced
13 December 2006	End of Additional Provision 3 petitioning period
<i>19 December 2006 – 8 January 2007: Christmas Recess</i>	
<i>8 February 2007 – 19 February 2007: Half Term</i>	
28 March 2007	Select Committee suspends hearings until consideration of Woolwich Additional Provision; Promoter's closing submissions made
25 April 2007	Debate on instructions relating to Additional Provision 4
16 May 2007	Additional Provision 4 deposited
12 June 2007	End of Additional Provision 4 petitioning period
12 July 2007	Commons Select Committee further interim decisions
<i>26 July 2007 – 8 October 2007: Summer Recess</i>	

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9 October 2007	Promoter's Response to further Select Committee interim decisions
11 October 2007	Appearance before Examiners on Standing Orders Committee regarding Additional Provisions 1 to 4
18 October 2007	Commons Select Committee reports the Bill Dissolution of Commons Select Committee
18 October 2007	Commons and Lords Standing Orders Committees
23 October 2007	Commons Select Committee First Special Report published and debate on Commons Carry-Over Motion
25 October 2007	Debate on Lords Carry-Over Motion
<i>30 October 2007 Prorogation</i>	
<i>6 November 2007 Queen's Speech</i>	
8 November 2007	Bill re-introduced
22 November 2007	Start of Commons Public Bill Committee (2 sessions)
27 November 2007	Continuation and conclusion of Commons Public Bill Committee (2 sessions)
13 December 2007	Report and Third Reading
14 December 2007	Introduced in the House of Lords, receives First Reading and order for petitions passed
18 December 2007	Examiner - second House proofs
<i>18 December 2007 - 7 January 2008: Christmas Recess</i>	
9 January 2007	Second Reading
30 January 2008	End of House of Lords petitioning period
19 February 2008	Start of House of Lords Select Committee proceedings
19 May 2008	Bill reported from House of Lords Select Committee
27 May 2008	House of Lords Select Committee publish their first special report
5 June 2008	Promoters response to the House of Lords Select Committee's first special report published
26 June 2008	House of Lords Grand Committee
16 July 2008	House of Lords Report stage
22 July 2008	House of Lords Third Reading
22 July 2008	Commons Consideration of Lords Amendments
22 July 2008	Royal Assent