

GREATER LONDON AUTHORITY ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Transport

Chapter VII: Public-Private Partnership Agreements

339. Chapter VII makes specific provision for the Public-Private Partnership for London Underground.

Sections 210 to 212: Introductory

340. *Sections 210 to 212* define a “PPP agreement” and the procedure to be followed for the designation of such an agreement. A PPP agreement must be a contract which involves the provision, construction, renewal or improvement, and maintenance of the London Underground. A PPP company is defined as the party undertaking to carry out or secure the carrying out of this work.

Sections 213 to 217: Key system assets

341. *Sections 213 to 217* enable “key system assets” to be designated by agreement between London Underground and a PPP company, thereby giving the assets special protection under the Act. *Section 215* extends the same protection to assets owned by third parties (such as a train leasing company) and used in connection with the Public-Private Partnership. It enables London Underground to enter into agreements directly with such third parties.
342. The effect of these provisions is that, without the consent of LRT (later TfL), designated assets cannot be transferred to another party, nor can any interest in or security over the assets be given to a third party. Designated liabilities cannot be released, discharged or transferred to another party without consent. Any transaction which contravenes these requirements will be void. No execution or other legal process can be commenced or continued, and no distress can be levied, against any property or rights which are key system assets.
343. The purpose of such a regime, which is based on that for “franchise assets” under section 27 of the Railways Act 1993, is to give statutory protection to the assets needed to run the Underground railway so that they will not be lost and will be immediately available to the public sector at the end of a PPP contract, ensuring that train services can continue without interruption.
344. *Section 217* enables TfL to transfer key system assets between TfL, its subsidiaries, PPP companies and PPP related third parties. This provision is necessary to ensure that designated key system assets can be returned to the public sector at the end of a PPP contract. It also enables the Mayor, at the end of a PPP contract, to transfer such assets direct to new PPP companies if he decides to enter into new PPP agreements. A transfer scheme must be made in accordance with the terms of the PPP agreement and it must be

approved by the Mayor to take effect. This section also introduces *Schedule 12* which sets out the detailed provisions applying to a PPP transfer scheme.

Sections 218 and 219: Land

345. *Section 218* disapplies landlord and tenant law from Public-Private Partnership leases so that London Underground and a PPP company will interpret their rights and duties solely in accordance with the PPP contract and lease. The purpose of the section is to enable the public sector to recover all the real property it needs to continue services when a PPP contract ends, without the delays inherent in established landlord and tenant practice.
346. *Section 219* disapplies the normal requirement to register title with the Land Registry for leases of over 21 years. This is intended to save the considerable time and money which would otherwise be required to produce copies of suitable plans, deeds, etc. The effort of complying with the registration requirements would be of little or no benefit because of the very restricted opportunities for PPP companies to transfer or otherwise deal with the land.

Sections 220 to 224: Insolvency

347. *Sections 220 to 224* and *Schedules 14 and 15* provide for a special PPP administration order regime. Such an order may be made by the High Court in relation to a PPP company which is on the point of insolvency or winding-up. It may direct a person appointed by the court to take over the running of the PPP company with a view to achieving the purposes of the PPP administration order in a manner which also protects the respective interests of the members and creditors of the PPP company. The purpose of the PPP administration order regime is to ensure that the duty of the administrator principally to protect the interests of members and creditors of a company is balanced against ensuring that activities under the PPP agreement are carried on, thus securing continuity of services for passengers.

Sections 225 to 237: The PPP Arbiter

348. *Sections 225 to 237* provide for the appointment of an arbiter by the Secretary of State, and set out the arbiter's general duties and powers. A PPP agreement may provide for any matter to be referred to the arbiter for direction or guidance under *sections 229 and 230*. It is envisaged that the arbiter's primary role will be to review the price to be paid to a PPP company for its obligations under a PPP agreement, if requested by the parties to do so at a periodic review of the agreement. Such periodic reviews will also enable TfL to carry out a thorough review of its priorities under the agreement.
349. *Section 225* provides for the appointment of the arbiter by the Secretary of State. *Section 226* makes provision concerning the terms of appointment and dismissal of the arbiter, whilst *section 227* deals with the appointment of staff and their ability to discharge functions on behalf of the arbiter. *Section 228* ensures that if, at any time, the posts of Rail Regulator and PPP arbiter are held by the same person, the staff employed by either body will have the legal powers to carry out the functions of both.
350. *Section 229* sets out the arbiter's powers to give directions on matters referred to him by a party to a PPP agreement. *Section 230* gives the arbiter a power to give non-binding guidance to the parties, the aim being to encourage the parties to reach agreement between themselves, in the light of the arbiter's guidance, without relying on a binding determination.
351. *Section 231* sets out the arbiter's duties when making determinations or giving guidance.
352. *Section 232* sets out further powers of the arbiter, including a power to inspect relevant assets. *Section 233* empowers the arbiter to request parties to a PPP agreement and their

associates to provide information which the arbiter considers relevant to the discharge of his functions. *Section 234* gives the arbiter the power to apply to the High Court for an order requiring provision of information, if a request is not complied with, and provides a criminal sanction in the event that someone deliberately alters or destroys documents requested by the arbiter. *Section 235* provides statutory protection to third parties against disclosure of information collected by the arbiter, except where it is necessary to carry out the specific statutory functions referred to in the section. It is enforceable by means of a civil injunction.

- 353. *Section 236* removes the liability of the arbiter and his staff for any acts or omissions, unless they can be shown to have been committed in bad faith.
- 354. *Section 237* provides for the funding of the arbiter by the Secretary of State and the recovery of costs from the parties concerned.

Sections 238 and 239: Miscellaneous and supplementary

- 355. *Section 238* extends statutory undertaker status to a PPP company when exercising statutory functions relating to a railway and carrying out the subject matter of a PPP agreement. This will effectively give a PPP company similar statutory undertaker status to that enjoyed by London Underground Limited. *Section 239* contains definitions of the terms used in this Chapter.