

CROSSRAIL ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

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)* disappplies 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

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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 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.
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

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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.