

# CROSSRAIL ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SCHEDULES

#### *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 disappplies 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 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

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

as authorising anything which would be an offence under the legislation dealing with the pollution of water.

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.