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STATUTORY INSTRUMENTS

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**2009 No. 2364**

**The London Underground (Victoria  
Station Upgrade) Order 2009**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

4.—(1) The Company may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (7), the Company may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (b) works to erect and construct such offices, and other buildings, machinery, apparatus, and other works, and conveniences as the Company thinks fit;
- (c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (d) facilities and works for the benefit or protection of land or premises affected by the authorised works; and
- (e) felling of trees.

(4) Without prejudice to the generality of paragraph (3), the Company may, in connection with the construction of the scheduled works remove, temporarily store and reinstate Little Ben.

(5) Subject to paragraph (7) the Company may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works.

(6) The Company may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(7) Paragraphs (3) and (5) shall only authorise the carrying out or maintenance of works within the Order limits.

**Power to deviate**

5.—(1) In constructing or maintaining any of the scheduled works, the Company may—

- (a) deviate laterally from the lines or situations shown on the works plans within the limits of deviation shown on those plans; and
  - (b) deviate vertically from the levels shown on the sections—
    - (i) subject to paragraphs (2) and (3) to any extent not exceeding 3 metres upwards in respect of any part of the scheduled works shown on the works plans as being above ground level; and
    - (ii) to any extent downwards as may be found to be necessary or convenient.
- (2) In constructing and maintaining Work Nos. 4A, 4C, 4D, 4E, 4G, 4H and 6 the Company may deviate vertically upwards to any extent provided that the work remains more than 4.5 metres below the level of the surface of the land but not so as to encroach into any basement, cellar or vault.
- (3) In constructing and maintaining Work Nos. 4F, 4I, 4J and 4K the Company may deviate vertically upwards within the limits of deviation shown on the section or sections relating to the relevant work.
- (4) In this article “level of the surface of the land” means—
- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building; or
  - (b) in any other case, ground surface level.

### *Streets*

#### **Power to alter layout, etc., of streets**

6.—(1) The Company may for the purposes of the authorised works alter the layout of any street within the Order limits and the layout of any street having a junction with such a street and without prejudice to this power the Company may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway or verge; and
- (c) carry out works for the provision or alteration of parking places, loading bays, bus stop clearways and bus laybys.

(2) The powers in paragraph (1) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld.

#### **Power to execute street works**

7.—(1) The Company may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c), including works necessary to prepare the ground for tunnelling or other works.

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Stopping up of streets**

8.—(1) Subject to the provisions of this article the Company may, in connection with the authorised works, stop up the street specified in column (2) of Schedule 3 (street to be stopped up) to the extent specified in column (3) of that Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along it shall be extinguished; and
- (b) the Company may appropriate and use for the purposes of its undertaking so much of the site of the street so stopped up.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to be paid compensation by the Company to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to paragraph 2 of Schedule 8 (provisions relating to statutory undertakers, etc.) and paragraph 3 of Schedule 10 (for protection of specified undertakers).

### **Temporary stopping up and diversion of streets**

9.—(1) The Company may, during and for the purposes of the execution of the authorised works temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the generality of paragraph (1), the Company may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) The Company shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without prejudice to the generality of paragraph (1), the Company may exercise the powers conferred by this article in relation to the streets specified in column (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the traffic regulation plan and set out in column (3) of that Schedule.

(5) The power conferred by paragraph (4) shall not be used to stop up the carriageway of Bressenden Place such that it is not available for the passage of traffic until a temporary alternative route for the passage of such traffic as is reasonably likely to have used that part of Bressenden Place to be stopped up is provided between points marked A and B on the traffic regulation plan and Victoria Street.

(6) The Company shall following the provision of the temporary alternative route referred to in paragraph (5) maintain that route to the reasonable satisfaction of the street authority and that route (or any subsequent temporary alternative route that meets the requirements of paragraph (5)) shall remain until such time as the temporary stopping up and diversion of Bressenden Place as authorised by paragraph (4) has ended.

(7) The Company shall not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) or (5), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(8) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Access to works**

**10.** The Company may, for the purposes of the authorised works with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works.

### **Construction and maintenance of altered or diverted streets**

**11.—(1)** Where a street is altered or diverted under this Order, or is reinstated following its temporary diversion, the altered, diverted or reinstated part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Company for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) In any action against the Company in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the Company had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the Company knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the Company could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the Company had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the Company had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

### **Agreements with street authorities**

**12.—(1)** A street authority and the Company may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any stopping up, alteration, diversion or reinstatement of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 7 (power to execute street works).

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) provide for the street authority to carry out any function under this Order which relates to the street in question; and

- (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### *Supplemental powers*

#### **Discharge of water**

**13.**—(1) The Company may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the power under paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1).

(3) The Company shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose but shall not be unreasonably withheld.

(4) The Company shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The Company shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension or any other potentially polluting material.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(2).

(7) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

#### **Protective works to buildings**

**14.**—(1) Subject to the following provisions of this article, the Company may at its own expense and from time to time carry out such protective works to any building lying within the protective works limits as the Company considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction, in the vicinity of the building, of any part of the authorised works (other than works authorised by this article); or

(b) after the completion of the construction of that part of the authorised works (other than works authorised by this article), at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

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(1) 1991 c. 56.

(2) 1991 c. 57.

(3) For the purpose of determining how the functions under this article are to be exercised the Company may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Company may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and any land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the Company shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(7) The Company shall compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use, it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

the Company shall compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without prejudice to article 41 (no double recovery), nothing in this article shall relieve the Company from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “protective works”, in relation to a building, means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and

- (b) “the protective works limits” means the limits of land for protective works shown on the land plans.

**Planning permission: supplementary matters**

15. Planning permission which is deemed by a direction under section 90(2A) of the 1990 Act to be granted in relation to works authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of that Act (cases in which land is to be treated as operational land for the purposes of that Act).

**Power to survey and investigate land, etc.**

16.—(1) The Company may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits or which may be affected by the authorised works;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Company thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1), unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the Company—

- (a) shall, if so required, before or after entering the land produce written evidence of authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent shall not be unreasonably withheld.

(5) The Company shall pay compensation for any loss or damage occasioned by the exercise of the powers conferred by this article to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.