

GREATER LONDON AUTHORITY ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Xii: Supplementary Provisions

Section 405: Power to amend Acts and subordinate legislation

613. *Section 405* provides that a Minister of the Crown may, by order, make such amendments, repeals or revocations to primary and subordinate legislation as appear to him to be appropriate in consequence of this Act or any regulations and orders made under this Act. The section enables an order to amend, repeal or revoke any such legislation (including this Act and any regulations or orders made under it) made before the 'relevant day', which is defined as the earliest day on which the Authority and all of the functional bodies are in being, and London Regional Transport and the Receiver for the Metropolitan Police District have ceased to exist.

Section 406: Transitional and consequential provision

614. *Section 406(1)* enables a Minister of the Crown to make by Order such incidental, consequential, transitional or supplementary provision as appears to him to be necessary or expedient for the reasons set out in paragraphs (a) to (d), for instance for giving full effect to this Act or for the general purposes or any particular purpose of this Act. For example, the power would be used to set out the transitional financial arrangements to apply to the GLA and functional bodies in 2000-01, because the GLA will not exist until part way through the year.
615. Provisions that may be made by Order under this section include those provisions set out in *section 406(2)*; those include provisions requiring or enabling preliminary steps to be taken by a person or body before the date on which powers conferred by the Act become exercisable by that person or body.

Section 407: Appointments by the Secretary of State

616. *Section 407* provides that the Secretary of State may exercise functions which will become exercisable by another body or person under or by virtue of this Act, for the purpose of appointing such persons as he considers necessary to provide for the satisfactory operation of any provision made by or under this Act when it comes into force. The power of the Secretary of State to exercise such functions for the purposes of appointing staff only continues until the relevant function becomes exercisable by the person or body concerned. When that function becomes so exercisable, the staff so appointed may be transferred to that person or body. Accordingly, any such staff may be appointed on terms and conditions which differ from standard Civil Service ones.
617. The power may be used, for example, to allow staff presently working within the London Ecology Unit, London Planning Advisory Committee and London Research Centre to be employed by the Secretary of State for the Environment, Transport and the Regions between the abolition of the three bodies, which it is anticipated will be on 1 April 2000, and the establishment of the GLA, which it is anticipated will be on

*These notes refer to the Greater London Authority Act 1999
(c.29) which received Royal Assent on 11th November 1999*

8 May 2000. It will also allow persons who will eventually work for the GLA and functional bodies to be recruited in advance of their establishment to do the necessary groundwork so that the bodies can operate effectively from the outset. The intention is that the Secretary of State for the Environment, Transport and the Regions or the Home Secretary, as appropriate, would act as the employer of these persons prior to their transfer to the GLA or the relevant functional body once they had been established.

Sections 408 and 409: Transfers of property, rights or liabilities and transfer schemes

618. *Sections 408 and 409* make provision to enable the transfer of such property, rights or liabilities as a Minister of the Crown considers appropriate to be made from various bodies and persons (referred to in these notes as the “predecessor bodies”) to various bodies or persons (referred to in these notes as the “successor bodies”). The predecessor bodies and the successor bodies are listed in section 408. Such transfers may be effected in two ways. A Minister of the Crown may make provision for transfers to take place by Order. Such an order would be made by a statutory instrument subject to the negative resolution procedure. Alternatively, a Minister of the Crown can instruct the predecessor body itself to prepare a transfer scheme. There is no requirement that transfer schemes should be laid before Parliament. A Minister of the Crown would also be able to make transfer schemes himself in relation to property, rights and liabilities of the Crown, such as those relating to the Highways Agency. Sections 408(4) and 409(3) specify the circumstances in which the power of a Minister to make an Order, and the powers in relation to the making of transfer schemes, are exercisable. These circumstances include the exercise of powers for the general purpose or any particular purpose of the Act.
619. The sections also provide for transfers, whether by order or transfer scheme under the Act, from the Urban Regeneration Agency or the Commission for the New Towns to the LDA. Section 38 of the RDA Act 1998 which, relates to corporation tax, is applied to such transfers. This will ensure, in particular, that any expenditure incurred by those predecessor bodies in developing land for regeneration can be set off against tax payable on the proceeds of sale of that land by the LDA.

Schedule 31: Transfer Schemes

620. *Schedule 31* makes further provision about the making and content of transfer schemes. Where a predecessor body makes a transfer scheme, it must be submitted to the Minister concerned for approval before it can come into operation. The Schedule provides for the Minister to make a scheme himself in relation to a predecessor body if he decides not to approve the one which the body itself has prepared. It also provides that before approving a transfer scheme the Minister must consult the body from which the transfer is being made and such successor bodies as have been established and are affected by the scheme. In the case of provisions affecting an existing pension scheme, the trustees, managers or administrators of the scheme must be consulted.

Section 410: Contracts of employment etc

621. *Section 410* provides that transfers between predecessor and successor bodies which may be made under the powers in sections 408 and 409 include the transfer of staff. In particular, it provides that where members of staff transfer, they will be treated as if their length of service is continuous between the predecessor and successor body, so that (for example) they are not disadvantaged when pension benefits are calculated. As the period of service is continuous, then for the purposes of Part XI of the Employment Rights Act 1996 (which covers, amongst other things, redundancy entitlements) the member of staff is not regarded as having been dismissed by the predecessor body and subsequently re-employed by the successor body as a result of the transfer.

Section 411: Pensions

622. *Section 411* allows a Minister of the Crown to make provision by order in relation to the pension arrangements for staff of predecessor and successor bodies. The broad intention is that staff who transfer to successor bodies should retain their membership of their current pension scheme on transfer. Amongst other things, an order made under this section can make provisions relating to the setting up of new pension schemes, the administration of schemes, and allowing participants in a particular pension scheme to become members of another scheme.

Schedule 32: London Regional Transport pension etc schemes

623. *Schedule 32* contains provisions implementing the assurances given by the Deputy Prime Minister (DPM) to LRT staff about their pension rights. The Schedule enables the Secretary of State to make orders to give staff transferring to the private sector the statutory right to remain as participating members of the London Regional Transport Pension Fund as long as they remain in work related to London Underground. It also enables the protection of the pension benefits of staff who transfer to the private sector and move out of Tube-related work while remaining in continuous employment. This protection applies to staff transferring as part of the London Underground PPP, and also those who will transfer or have transferred as part of Private Finance Initiative deals since the DPM gave his assurances. The Schedule also provides for the continuation of certain LRT schemes into the new structure that will take effect with the establishment of Transport for London.

Section 412: Transfer and pension instruments: common provisions

624. *Section 412* sets out common provisions which apply to transfers of property, rights or liabilities which take place by transfer and pension instruments (defined as an order made under sections 408 or 411 or a scheme under section 409). Some examples of these are considered below. There may be situations where some but not all of a predecessor body's functions transfer to a successor body, and the predecessor body will remain in existence after the transfer (for example the Highways Agency). This section provides that a transfer or pension instrument may provide for the apportionment or division of any property, rights or liabilities.
625. Where successor bodies take over the functions of predecessor bodies they will need also to be able to take over those things such as contracts or property which allow these functions to be carried out effectively. Contracts or leases will, on occasion, contain provisions preventing their being transferred or assigned to a third party. The consequence of a breach of such a provision may be the termination of the contract or lease. In the case of the establishment of the GLA and the functional bodies, contracts or leases will simply be transferred as the result of the transfer of an accompanying function to a successor body. It is necessary to ensure that such "anti-assignment clauses" do not operate to prevent the successor body from inheriting contract or lease. The section therefore provides for such contracts or leases to continue as if in law no transfer had taken place.
626. That property etc which is being transferred may be described specifically, or in relation to a function, or through a combination of these two. The section also provides that a transfer or pension instrument (other than an order under section 411) may provide an arbitration process for resolving any disputes which may occur concerning the effect of that instrument and, in addition, that certificates given jointly by the transferor and transferee would be conclusive for all purposes regarding the effect of the instrument.
627. The section provides that a Minister of the Crown may by order confer on successor bodies any statutory functions which were exercisable in relation to property, rights or liabilities transferred by a transfer or pension instrument. It also requires predecessor bodies, successor bodies and the managers and administrators of pension schemes to provide Ministers with such assistance or information as is reasonably required to

exercise powers relating to transfer or pension instruments. The section also creates rights for the production of documents of title in certain situations, such as where the transferor is entitled to retain possession of such documents and needs to provide the transferee with a copy of them.

Section 413: Modification of transfer or pension instruments

628. *Section 413* provides for the modification of transfer or pension instruments. A transfer or pension instrument may be modified at any time after it has come into force by an order made by a Minister of the Crown. In relation to transfer schemes, a Minister of the Crown may direct that any of the predecessor bodies shall prepare modifications to the scheme in accordance with the terms of the direction. Before approving any modifications, the Minister will have to consult other parties affected. In the case of instruments relating to pensions, the Minister will have to consult any trustees, managers or administrators of the pension scheme affected.

Section 414: Foreign property, rights or liabilities: perfection of vesting

629. *Section 414* makes provision as to the duties of the predecessor body and successor body in connection with the vesting under the relevant foreign law of foreign property, rights and liabilities, and provides that the transferor shall have the necessary powers to enable the performance of these duties.

Section 415 and 416: Continuity

630. *Section 415* amongst other matters, contains provisions whereby acts done by the predecessor body shall be taken to have been done by the successor body, unless the transfer order or instrument provides otherwise. It also provides for the continuation of matters, including legal proceedings, which relate to any of the functions, property, rights or liabilities transferred and in the process of being done by or in relation to the transfer of. *Section 416* provides for the continuation of agreements made by LRT under sub-paragraph (a) of section 3(2A) of the LRT Act 1984, notwithstanding that certain statutory functions of LRT referred to in such agreements are to be re-enacted and held by the Mayor and TfL.

Sections 417 to 419 and Schedule 33: Taxation

631. *Sections 417* and *418* exempt transfers by or under the Act from stamp duty and stamp duty reserve tax. *Section 417* exempts transfers made by order or scheme under sections 408, 409 and 411, and transfers to prepare predecessor bodies for transfer to the GLA or a functional body. *Section 418* exempts transfer schemes made by LRT for the vesting of property in subsidiaries of London Underground in order to implement the PPP.
632. *Section 419* exempts TfL, the MPA, and the LFEPA from paying income tax, corporation tax and capital gains tax, by treating them as local authorities for the purposes of section 519 of the Income and Corporation Taxes Act 1988 and section 271 of the Taxation of Chargeable Gains Act 1992. The predecessor bodies of both the MPA and LFEPA – the Receiver for the Metropolitan Police District and the London Fire and Civil Defence Authority – fall within the ambit of these Acts as major precepting authorities, and do not pay tax. As a major precepting authority the GLA itself will not pay tax. The LDA will pay tax in the same way as RDAs generally.
633. This section also gives effect to *Schedule 33*. This Schedule provides for transfers made between LRT and TfL, and transfers made during any preceding reorganisation of LRT, to be tax neutral. It also clarifies the tax treatment of London Underground PPP agreements.