

CROSSRAIL ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Works

Section 1: Construction and maintenance of scheduled works

8. *Section 1(1)* authorises the nominated undertaker to construct and maintain the works necessary for Crossrail. The principal works necessary – the so called “scheduled works” – are listed in Schedule 1 and are also shown on the plans and sections deposited with the Crossrail Bill on its introduction.
9. *Section 1(2)* requires, subject to section 1(3), the scheduled works to be constructed in the lines or situations, and on the levels, shown on the deposited plans and sections. The plans and sections therefore give an indication of where the works will be constructed. Also, if in the case of a station, depot or shaft, the deposited sections show an upper limit, the relevant works must be constructed within that limit.
10. *Section 1(3)* allows the nominated undertaker to construct or maintain a scheduled work in a different lateral position from that shown on the plans, as long as it is within the area shown for the work on the plans (the “limit of deviation” for the work). This flexibility, and the flexibility provided by sections 1(4) and 1(5), is customary in Acts for railway projects and reflects the fact that some movement may be necessary, for example to avoid hidden obstacles that are only discovered once construction is underway.
11. *Section 1(4)* allows the nominated undertaker to deviate in respect of works to any extent downwards.
12. *Section 1(5)* allows the nominated undertaker to deviate in respect of works upwards to an extent of three metres, save in respect of the works identified in section 1(5)(a) where the upward limit of deviation is six metres.
13. However, *section 1(6)* provides that where an upper limit for a station, depot or shaft is shown on the deposited sections, the power to deviate is subject to that upper limit.

Section 2: Works: further and supplementary provisions

14. *Section 2* brings into effect Schedule 2, which contains additional provisions about the works which may be carried out, primarily to facilitate the main effort of construction of the scheduled works.

Section 3: Highways

15. *Section 3* brings into effect Schedule 3, which contains provisions dealing with the highway works necessary for Crossrail.

Section 4: Overhead lines

16. *Section 4(1)* disapples the normal consents regime established under the Electricity Act 1989 for the installation of overhead electric lines on land that is within the limits of deviation for the scheduled works or the land required for Crossrail (the “limit of land to be acquired or used”). The limits of deviation and the limit of land to be acquired or used taken together are referred to in these Explanatory Notes as “the Act limits”.
17. *Section 4(2)* brings into effect Schedule 4, which establishes a replacement consents regime for such lines.
18. *Section 4(3)* provides that once the consent granted under Schedule 4 is revoked or expires, the line to which it relates will revert to being subject to the Electricity Act 1989.
19. *Section 4(4)* provides that any consent granted under Schedule 4 by the Secretary of State for Transport and the Secretary of State for Business, Enterprise and Regulatory Reform, acting jointly, may include the grant of deemed planning permission, with or without conditions.

Land

Section 5: Temporary possession and use

20. *Section 5* brings into effect Schedule 5, which contains provisions dealing with the temporary possession and use of land required for Crossrail.

Section 6: Acquisition of land within limits shown on deposited plans

21. *Section 6(1)* authorises the Secretary of State, rather than the nominated undertaker, to acquire compulsorily the land required for Crossrail within the Act limits.
22. *Section 6(2)* provides that, without prejudice to the general power granted by section 6(1), the land identified in columns (1) and (2) of the table in Part 1 of Schedule 6 may be acquired or used for the purpose set out in column (3) of the table. This table therefore gives an indication of the purposes for which certain parcels of land may be acquired or used (for example, for utility diversions, means of access, or for a worksite).
23. *Section 6(3)* brings into effect Parts 2 and 3 of Schedule 6, which deal with the application of legislation relating to compulsory purchase and supplementary provisions.
24. *Section 6(4)* provides that the power granted by subsection (1) shall not apply to land if the surface of the land is comprised in a highway and the land is specified in the table in paragraph 15(2) of Schedule 3.
25. *Section 6(5)* provides that the power granted by subsection (1) shall not apply to any land shown as being required temporarily, unless the land is also specified in paragraph 11(1) of Schedule 6. In that case the power does extend to the acquisition of subsoil at a depth greater than 9 metres from the surface of such land.
26. *Section 6(6)* provides that the compulsory purchase power granted by subsection (1) shall expire 5 years after the Act obtained Royal Assent.
27. *Section 6(7)* allows the Secretary of State, by order, to extend the time limit in subsection (6). This extension may be done only once in relation to any particular bit of land, and the time limit may be extended by no more than five years. Any such order is subject to special parliamentary procedure.

Section 7: Acquisition of land not subject to the power under section 6(1)

28. *Section 7(1)* allows the Secretary of State to acquire compulsorily land outside the Act limits, if it is needed in connection with Crossrail.
29. *Section 7(2)* and *(3)* enable the Secretary of State to acquire land within the Act limits, if it is needed in connection with Crossrail, but restrict the power so that it only applies where the power under section 6(1) does not. The difference between the two powers is that the former requires the making of a compulsory purchase order, whereas the latter does not (see paragraph 2 of Schedule 6).
30. *Section 7(4)* makes it clear that land may be acquired under these provisions for certain purposes, such as for the relocation of drainage or utility undertakers' apparatus, which can sometimes be needed some distance from the line of the railway itself, or for land statutorily required to be provided in exchange for land taken.
31. *Section 7(5)* allows the Secretary of State to acquire an easement or other new right over the land in question, as opposed to acquiring the land itself.
32. *Section 7(6)* provides that any acquisition under the section would be subject to normal compulsory purchase procedures under the Acquisition of Land Act 1981.
33. *Section 7(7)* provides that the same modifications of the compulsory purchase legislation apply in relation to the acquisition of easements under subsection (5) as apply in relation to the acquisition of easements under section 6(1).

Section 8: Extinguishment of private rights of way

34. *Section 8(1)* and *(2)* provide for any private rights of way over land within the Act limits held by the Secretary of State for the purposes of the Crossrail works to be extinguished.
35. *Section 8(3)* sets out certain rights of way that are not to be extinguished.
36. *Section 8(4)* enables the Secretary of State to direct that any other particular right of way is to be excepted from extinguishment under the section.
37. *Section 8(5)* and *(6)* provide for the private rights of way to be extinguished at the time of acquisition, in respect of some land, and at the time of entry onto the land, in the case of other land.
38. *Section 8(7)* and *(8)* provide that compensation may be payable to anyone who suffers loss as a result of any such extinguishment, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

Section 9: Extinguishment of rights of statutory undertakers etc.

39. *Section 9(1)* provides for the rights of statutory undertakers over land held by the Secretary of State for the purposes of the Crossrail works to be extinguished as if it had been acquired under Part 9 of the Town and Country Planning Act 1990.
40. *Section 9(2)* to *(5)* amend the application of the Town and Country Planning Act 1990. This is primarily 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 will not have been the acquiring authority.

Planning

Section 10: Planning: general

41. *Section 10(1)* provides for deemed planning permission under Part 3 of the Town and Country Planning Act 1990, to be granted for the development authorised by the Act, subject to subsection (2).

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

42. *Section 10(2), (3), (4) and (8)* provides that the deemed planning permission only applies to development comprising a specified work listed in Schedule 1 to the Act (a “scheduled work”) or, in the case of other ancillary development not comprising a scheduled work which is likely to have a significant effect on the environment or otherwise requires environmental assessment, if the ancillary development has been environmentally assessed in the environmental statements deposited with or produced during the passage of the Crossrail Bill.
43. *Section 10(5)* provides that where an application for planning permission is made to the local planning authority in respect of development excluded from the deemed planning permission conferred by section 10(1) by virtue of subsection (2), (3), (4) and (8), the requirements for environmental assessment are to apply to the application even if the area of the development does not exceed the thresholds provided for in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
44. *Section 10(6)* brings into effect Schedule 7. Schedule 7 establishes a planning regime that seeks to give local planning authorities an appropriate degree of control over the detailed planning aspects of Crossrail (and is be augmented by other arrangements outside the Act, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). These provisions, and the accompanying documents, are based on the framework established for the Channel Tunnel Rail Link.

Section 11: Permitted development: time limit

45. *Section 11(1)* provides that, for scheduled works, the deemed planning permission granted by Section 11 applies only to works begun within ten years of Royal Assent.
46. *Section 11(2)* allows the Secretary of State to extend this time limit by means of an order.
47. *Section 11(3)* provides for such an order to be subject to the negative resolution procedure.
48. *Section 11(4)* disapplies section 91 of the Town and Country Planning Act 1990, which sets out the duration of normal planning permission, in respect of the planning permission granted by subsection (1).

Section 12: Fees for planning applications

49. *Section 12(1)* allows the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly, to make regulations about the fees to be charged by local planning authorities for the requests for approval of details under Schedule 7 to the Act to be submitted for Crossrail.
50. *Section 12(2) and (3)* set out what those regulations may cover.
51. *Section 12(4)* provides for the regulations to be made in the form of a statutory instrument subject to negative resolution procedure.
52. *Section 12(5)* disapplies any regulations made under section 303 of the Town and Country Planning Act 1990, which set out the fees normally charged for planning applications, in respect of any supplementary request for approval arising from a planning application deemed granted by section 10(1) of the Act. Special provision for Crossrail planning fees reflects the special planning regime applying to Crossrail provided by Section 10.

Section 13: Power to disapply section 10(1)

53. *Section 13(1)* allows the Secretary of State, by means of an order, to disapply the deemed planning permission granted by section 10(1) in respect of development consisting of operations for the maintenance or alteration of the Crossrail works, from the date specified in the order. In essence, this provision allows the Secretary of State to switch off the deemed planning permission granted by the Act in respect of future Crossrail works, should he decide to do so (this is most likely to be used in the case of the electrification and signalling work done on sections of the existing railway network, and would ensure that a single planning regime covered works in relation to existing track after the Crossrail construction phase has been completed).
54. *Section 13(2)* provides that, in the event of such a disapplication, any such development would be subject to the normal provisions of the Town and Country Planning (General Permitted Development) Order 1995 applying to development authorised by a local Act.
55. *Section 13(3), (4) and (5)* provide for the order to make different provisions in different cases, and for it to be made by means of a statutory instrument.

Section 14: EIA regulations: replacement development

56. *Section 14(1), (2) and (3)* provide that where a building is demolished or substantially demolished for the purposes of the Crossrail works, any later planning application for its replacement (for example, for building over a Crossrail station) must be accompanied by an environmental assessment if the building demolished or substantially demolished is listed in the table in the section or it is not so listed but the provision of the replacement would be likely to have significant effects on the environment. This provision is intended to ensure that all the direct and indirect environmental effects of the development authorised by the Act are properly assessed at the appropriate stage.

Section 15: Extension of permitted development rights

57. *Section 15* allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights for work which they carry out in relation to Crossrail, provided that the significant impacts of such diversions have been environmentally assessed for the purposes of the project as a whole. Such assessment would be found within the various statements containing environmental information which the Department has produced at the introduction of the Act and subsequently where significant project changes have emerged. As with section 14, this provision is intended to ensure that the direct and indirect environmental effects of the development authorised by the Act are properly assessed at the appropriate stage.
58. *Section 15* also brings into effect Schedule 8, which enables the Secretary of State to intervene in the process of statutory undertakers carrying out work in relation to Crossrail but under their own permitted development rights. The Secretary of State may intervene under Schedule 8 for the purposes of avoiding a breach of a relevant Parliamentary undertaking or for securing that the environmental effects of carrying out development are not materially different from those assessed.

Heritage

Section 16: Disapplication and modification of controls

59. *Section 16* brings into effect Schedule 9, which contains provisions dealing with the heritage aspects of Crossrail. Section 16 also allows the Secretary of State to make an order which would, in effect, switch off various parts of Schedule 9 in relation to any work constructed in exercise of the powers in this Act. This would enable the restoration of the normal consents regime following the construction of Crossrail and allow post-construction maintenance of Crossrail works to be controlled in the usual way for works affecting listed buildings and other historic property.

Section 17: Rights of entry

60. *Section 17* brings into effect Schedule 10, which contains provisions dealing with the rights of entry granted to the Historic Buildings and Monuments Commission for England, or English Heritage as it is more commonly known.

Trees

Section 18: Power to deal with trees on neighbouring land

61. *Section 18(1)* allows the nominated undertaker, by notice, to require the occupier of land on which a tree is situated which overhangs the Crossrail works to remove, top or lop that tree where it is necessary to allow the Crossrail works to be maintained, or for the safe operation of Crossrail.
62. *Section 18(2)* and *(3)* allow the occupier of the land to serve a counter-notice objecting within 28 days, in which case the matter is referred to the County Court to determine whether the notice should be confirmed.
63. *Section 18(4)*, *(5)* and *(6)* allow the nominated undertaker, in default of a notice being complied with, to do himself the things required to be done by the notice, subject to doing any topping or lopping work in a husband like manner and in such a way as to cause the minimum of damage to the tree.
64. *Section 18(7)* allows the occupier of the land on which the tree concerned is growing to apply to the County Court for compensation for loss or damage suffered, or for any expenses in complying with the notice.

Section 19: Disapplication of controls

65. *Section 19(1)* and *(2)* disapply tree preservation orders made under section 198(1) of the Town and Country Planning Act 1990 and the provisions of section 211 of the Act, dealing with trees in conservation areas, from any tree works that are carried out under Section 17, or as a consequence of the construction or maintenance of Crossrail works or to enable the safe operation of Crossrail.

Noise

Section 20: Control of construction sites: appeals

66. *Section 20(1)*, *(2)* and *(3)* modify the operation of sections 60 and 61 of the Control of Pollution Act 1974, so that appeals under those provisions are determined by the Secretary of State or if the parties agree, by arbitration rather than by a magistrates' court.
67. *Section 20(4)* and *(5)* enable the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly, to make regulations about procedure in relation to such arbitrations. Such regulations must be made by statutory instrument subject to the negative resolution procedure.

Section 21: Proceedings in respect of statutory nuisance: defence

68. *Section 21* provides that an order under section 82(2) of the Environmental Protection Act 1990 may not be made by a magistrates' court in connection with noise emitted from premises, or from a vehicle, machinery and equipment in a street, where the nominated undertaker can show that they are used for Crossrail purposes and the Crossrail works concerned are being carried out in accordance with a notice or consent issued by the local authority under section 60, 61 or 65 of the Control of Pollution Act 1974. These provisions of the 1974 Act address control of noise on construction sites (section 60), consent for work on construction sites (section 61) and consent to exceed noise limits (section 65).

Railway matters

Section 22: Objective of ORR in relation to Crossrail

69. *Section 22(1)* provides that the objectives in section 4(1) of the Railways Act 1993 (which are the components of a general duty) shall, in relation to the Office of Rail Regulation (“ORR”), be treated as including the objective of facilitating the construction of Crossrail. *Section 22(2)* requires the ORR to consult the Secretary of State about the exercise of its duty in section 4(1) of the 1993 Act as modified by section 22(1).
70. *Section 22(3) and (4)* enable the Secretary of State to specify by order when section 22 ceases to have effect. This power is provided as there may be ambiguity concerning precisely when the construction phase of the Crossrail project should be regarded as having been completed. Such an order must be laid before Parliament after being made but is not subject to annulment.

Section 23: Duty of ORR to publish reports

71. *Section 23(1) and (2)* require the ORR to publish a report on two matters from time to time and also at any time that the Secretary of State requires. The first potential subject-matter of such a report is what the ORR has done or proposes to do to further its objective of facilitating the construction of Crossrail (the objective arising under section 22). The second matter is how the ORR has exercised or proposes to exercise its functions in connection with the operation of passenger services that make use of the principal Crossrail tunnel.
72. *Section 23(3)* provides that the ORR shall have regard to such a report where relevant in the exercise of any of its functions.
73. *Section 23(5) and (6)* provide for the termination of the requirement to report when the Secretary of State specifies by order, which must be laid before Parliament but is not subject to annulment. This provision enables the otherwise open-ended requirement to report to be brought to a close, as a point may be reached when it will cease to serve a useful purpose.

Section 24: Licensing

74. *Section 24* temporarily disapplies the requirement for either a licence, or a licence exemption, under the Railways Act 1993 which would otherwise exist in respect of any network constructed using Act powers, and in respect of any train being used on such a network. This disapplication lasts until the Secretary of State gives notice of his determination that the network is ready for commercial use. Before newly constructed track is open for commercial use, it is possible that use will be made of it for construction purposes or for testing, and this section removes the need for a licence in respect of such operations.

Section 25: Award of Crossrail franchises to public-sector operators

75. *Section 25* disapplies the prohibition in section 25 of the Railways Act 1993 on public sector operators being a franchisee in respect of passenger railway services. It therefore allows a public sector operator to be a franchisee under a franchise agreement in two circumstances. The first circumstance is where the franchise agreement relates wholly or mainly to services that use the principal Crossrail tunnel. This enables ancillary services to be grouped with a Crossrail service in a public sector operation. The second circumstance is where the franchise agreement relates wholly or mainly to services that operate on at least part of the Crossrail route where such services are likely to be subject to substantial disruption because of Crossrail construction. Substantial disruption to services is determined by reference in particular to the frequency of disruption, the

duration of the period during which services are disrupted and the severity of the likely disruption.

Section 26: Disapplication of franchising and access exemptions

76. *Section 26(1)* and *(2)* allow the Secretary of State, by means of an order, to revoke or amend certain exemptions granted under the Railways (Heathrow Express) (Exemptions) Order 1994 (“the Heathrow Express Order”). The Secretary of State also has the power to impose, or make more onerous, conditions attaching to the relevant exemptions. The relevant exemptions which may be removed are those which disapply the ORR’s role of approving or directing the entry into access contracts for railway facilities (“access exemptions”), and the exemption preventing services on that track from being franchised.
77. *Section 26(3)* applies to track, stations and facilities where the relevant access exemption contained in the Heathrow Express Order is ended under subsection (1). In such circumstances the Secretary of State may, by means of an order, make provision for treating as void any access contract permitting use of that facility. Exceptions to this provision can also be made in the order, thus enabling a particular contract to continue in existence when others are terminated.
78. *Section 26(4)* provides that the powers granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to access exemptions and access contracts shall only be exercisable for the purposes of facilitating Crossrail passenger services.
79. *Section 26(5)* provides that the powers granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to the exemption from the franchising regime shall only be exercisable for the purpose of facilitating Crossrail passenger services or enabling the franchising of services to Heathrow.
80. *Section 26(6)* provides that an order under this section shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

Section 27: Closures

81. *Section 27* disapplies the closure provisions of the Railways Act 2005 where any such closure is required in connection with construction or maintenance of the Crossrail works, or as a consequence of Crossrail passenger services. The disapplication does not apply to Crossrail services or facilities themselves.

Section 28: Key system assets

82. Section 216(1)(b) of the Greater London Authority Act 1999 requires the consent of Transport for London before the creation of any interest in, or rights over, any assets designated as “key system assets”. Such key system assets are designated as such either in, or in respect of, London Underground Limited’s Public Private Partnership agreements. *Section 28(1)* and *(2)* disapply section 216(1)(b) of the 1999 Act – and hence disapply the requirement for Transport for London’s consent – where the creation of such interests or rights would facilitate the construction or operation of Crossrail. The construction and operation of Crossrail may interact with, or have an effect on, the London Underground.

Section 29: Power to designate persons as “protected railway companies”

83. *Section 29(1)* and *(2)* allow the Secretary of State, with the consent of the private sector company concerned, by order to provide that such company be treated as a protected railway company for the purposes of the Railways Act 1993. Such a company must be the manager of a railway facility that is contained in or associated with the principal Crossrail tunnel.

84. The effect of a company being treated as a protected railway company is to engage sections 59 to 65 of the Railways Act 1993 in respect of that company. These provisions enable the Secretary of State to apply to a Court for a “railway administration order” in respect of an insolvent protected railway company, or to intervene (and apply for such an order) during the voluntary winding up or insolvency proceedings of such a company. The purposes of railway administration orders are to secure the transfer to another company of an undertaking so that relevant railway operations may be continued, and to secure the continuation of such railway operations pending a transfer.
85. *Section 29(3)* provides that an order under the above subsection shall be subject to annulment by a resolution of either House of Parliament.

Section 30: Duty to co-operate

86. *Section 30(1)* provides a mechanism for the nominated undertaker to require others to co-operate with him during the construction, maintenance and operation of Crossrail, by entering into an agreement to deal with a problem relating to a railway asset. This provision reflects the fact that Crossrail will interact with the existing railways, both overland and underground.
87. *Section 30(2)* provides a reciprocal mechanism for the benefit of any controller of a railway asset (most likely an owner or operator of track) affected by the construction, maintenance or operation of Crossrail.
88. *Section 30(3)* provides for the terms of any such agreements to be agreed between the parties, or else referred to arbitration (for which arbitration section 31 makes provision).
89. *Section 30(5)* provides that the mechanisms arising under subsections (1) and (2) do not apply where the matter requiring resolution is under the (statutory or contractual) jurisdiction of the Office of Rail Regulation.

Section 31: Arbitration after referral under section 30(3)

90. *Section 31* sets out a mechanism for the arbitration of any disputes under section 30(3).
91. *Section 31(3)* allows the Secretary of State, who is required to be notified that a dispute has been referred to arbitration, to direct the arbitrator as to the results that are to be achieved, so far as reasonably practicable, by the agreement for which the terms are to be determined under the arbitration. In doing so the Secretary of State is confining the arbitrator’s jurisdiction.
92. *Section 31(6)* clarifies what the arbitrator must do: *Section 31(7)* clarifies how he must carry out his functions.

Section 32: Arbitration under section 30(3): multiple proceedings

93. *Section 32* sets out the arrangements to apply in the case of multiple arbitrations under section 30, allowing those proceedings to be consolidated or held concurrently.
94. *Section 32(2)* means that any group of hearings to be consolidated must consist of section 30(3) proceedings and arbitral proceedings relating to one or more such set of proceedings.

Section 33: Transfer of functions relating to works

95. *Section 33(1)* provides for the Secretary of State, if he acquires any land from a railway operator for the purposes of Crossrail and on that land there are works authorised by statute, to, by means of an order, transfer to him or to the nominated undertaker, any statutory power or duty relating to the works previously exercisable by the railway operator. This section simply allows any statutory powers or duties to be transferred with the land acquired.

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96. *Section 33(2)* allows the Secretary of State, by means of an order, to provide for the further transfer to himself or to a nominated undertaker of any power or duty transferred under this section.
97. *Section 33(3)* allows the Secretary of State, if a railway operator acquires any land from the Secretary of State on which there are Crossrail works, to, with the consent of the railway operator concerned, by order transfer any duty under the Act relating to the works.

Section 34: Application of section 122 of the Railways Act 1993

98. *Section 34* is designed to make the defence of statutory authority that is available under section 122 of the Railways Act 1993, and is relevant to actions for nuisance etc, available in circumstances where the licensing requirement under the 1993 Act does not apply because of section 24. This is necessary because section 122 only applies where the operator of the relevant railway asset has a licence, or the benefit of a licence exemption, under the 1993 Act.

Section 35: Application of other railway legislation

99. *Section 35* brings into effect Schedule 11, which contains provisions dealing with the application of railway legislation to Crossrail.

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)* disapplies 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 .

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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 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

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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 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.