
STATUTORY INSTRUMENTS

2009 No. 2364

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

PART 5

MISCELLANEOUS AND GENERAL

Traffic regulation

34.—(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the Company may, at any time for the purposes of the construction of the authorised works prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles in the manner specified in Schedule 11 (traffic regulation) on those roads specified in column (1) and along the lengths and between the points specified in column (2) of that Schedule.

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, which consent shall not be unreasonably withheld, the Company may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction of the scheduled works, at any time prior to the opening of the scheduled works for use—

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road; and
- (e) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by the Company.

(3) The Company shall not exercise the powers of paragraphs (1) and (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the Company's intention in the case of sub-paragraph (a).

(4) Any prohibition, restriction or other provision made by the Company under paragraph (1) or (2) shall—

- (a) have effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 11 (traffic regulation)) to which the prohibition, restriction or other provision is subject; and

(b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004⁽¹⁾ (road traffic contraventions subject to civil enforcement).

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by the Company from time to time by subsequent exercise of the powers of paragraph (2) at any time prior to the opening of the scheduled works for use.

(6) Before complying with the provisions of paragraph (3) the Company shall consult the chief officer of police and the traffic authority in whose area the road is situated.

(7) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Street traders

35.—(1) Where the Company considers that the carrying on within any part of a street within the Order limits by the holder of a street trading licence of the trading permitted by that licence would prevent or materially impede the construction or maintenance of the scheduled works, the Company may—

(a) revoke that licence if it only permits trading in a part of a street in which the authorised works are to take place; or

(b) with the consent of the Council, vary the conditions on which that licence is granted and any standard conditions imposed under section 10 (standard conditions) of the 1999 Act.

(2) The conditions on which that licence is granted and any standard conditions imposed under section 10 of the 1999 Act may be varied by the Company under paragraph (1) so that the licence permits trading in a street or part of a street beyond the areas in which the authorised works are to take place.

(3) The Company shall serve written notice of any such revocation or variation on the licence-holder in question not less than 28 days before the revocation or variation is to take effect.

(4) Where the Company revokes a street trading licence under this article, the Council may remit or refund, as it considers appropriate, the whole or a part of—

(a) any fee paid for the grant or variation of the licence; or

(b) any charges made by the Council under section 22 (fees and charges) of the 1999 Act.

(5) No legal proceedings whatever may be taken against the Council in relation to any consent given under paragraph (1)(b) except where the Council has acted negligently in giving that consent.

(6) The Company shall pay compensation to any person who suffers any loss or damage from the exercise of the powers conferred by paragraph (1) and in assessing the amount of any such compensation there shall be taken into account any money paid to that person pursuant to paragraph (4).

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) In this article—

(1) 2004 c. 18.

“the 1999 Act” means the City of Westminster Act 1999⁽²⁾;

“the Council” means Westminster City Council in relation to a street trading licence applying to its area, and includes the Council’s employees, agents and contractors; and

“street trading licence” means a licence to trade in a street granted to any person by the Council pursuant to section 9 (street trading licences) of the 1999 Act and includes a temporary licence granted pursuant to section 21 (temporary licences) of that Act.

Obstruction of construction of authorised works

36. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the Company in setting out the lines of the scheduled works, or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Company,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Disclosure of confidential information

37. A person who—

- (a) enters a manufactory, workshop or workplace in pursuance of the provisions of article 14 (protective works to buildings) or article 16 (power to survey and investigate land, etc.); and
- (b) discloses to any person any information obtained pursuant to sub-paragraph (a) and relating to any manufacturing process or trade secret,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person’s performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Defence to proceedings in respect of statutory nuisance

38.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽³⁾ (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽⁴⁾; or
- (b) that the nuisance is a consequence of the operation of the works authorised by this Order and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

(2) 1999 c. i.
(3) 1990 c. 43.
(4) 1974 c. 40.

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article are without prejudice to any rule of common law having similar effect.

Certification of plans, etc.

39. The Company shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the works plans, the land plans and the traffic regulation plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the works plans, the land plans and the traffic regulation plan referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

40.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(5) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement shall be taken to be fulfilled only where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender shall provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person shall give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

41. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Arbitration

42. Except where otherwise expressly provided for in this Order and unless otherwise agreed between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.