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STATUTORY INSTRUMENTS

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**2018 No. 574**

**The Silvertown Tunnel Order 2018**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Disapplication of legislation, etc.**

**3.—(1)** The following enactments do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within any maintenance period defined in article 30(14), any maintenance of any part of the authorised development—

- (a) Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 <sup>M1</sup>, subject to paragraph (3);
- (b) Metropolitan Board of Works (Various Powers) Act 1882 <sup>M2</sup>;
- (c) London County Council (General Powers) Act 1907 <sup>M3</sup>;
- (d) London Overground Wires &c. Act 1933 <sup>M4</sup>;
- (e) London County Council (General Powers) Act 1957 <sup>M5</sup>;
- (f) London County Council (General Powers) Act 1961 <sup>M6</sup>;
- (g) London County Council (General Powers) Act 1962 <sup>M7</sup>;
- (h) sections 66 to 75 of the 1968 Act;
- (i) Greater London Council (General Powers) Act 1970 <sup>M8</sup>;
- (j) Thames Barrier and Flood Prevention Act 1972 <sup>M9</sup>;
- (k) Thames Water Authority Land Drainage Byelaws 1981;
- (l) Greater London Council (General Powers) Act 1986 <sup>M10</sup>;
- (m) section 24 (restrictions on abstraction) of the Water Resources Act 1991 <sup>M11</sup>;
- (n) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991;
- (o) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 <sup>M12</sup> in respect of a flood risk activity only; and
- (p) the provisions of the Neighbourhood Planning Act 2017 <sup>M13</sup> in so far as they relate to temporary possession of land under articles 29 and 30 of this Order.

(2) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010 <sup>M14</sup> any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(3) The disapplication of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 by paragraph (1)(a) does not affect the Environment Agency's ability to use the powers vested in it under that Act against any person, other than TfL and any other person exercising a power under this Order, provided that the use of those powers vested in the Agency does not interfere with the construction of the authorised development [<sup>F1</sup>and, within any maintenance period referred to in paragraph (1), any maintenance of any part of the authorised development].

(4) Following the expiry of any maintenance period defined in article 30(14), the requirement under section 70<sup>M15</sup> (works not to be constructed, etc., without works licence) of the 1968 Act to obtain a works licence under section 66 (licensing of works) of that Act does not apply to anything done within any structure forming part of the authorised development in connection with its operation or maintenance or any other function of TfL.

**F1** Words in art. 3(3) inserted (22.2.2019) by [The Silvertown Tunnel \(Correction\) Order 2019 \(S.I. 2019/413\)](#), arts. 1, 2(3)

#### **Marginal Citations**

- M1** 1879 c. cxcvii.
- M2** 1882 c. lvi.
- M3** 1907 c. clxxv.
- M4** 1933 c. xliv.
- M5** 1957 c. xxxv.
- M6** 1961 c. xliii.
- M7** 1962 c. xlv.
- M8** 1970 c. lxxvi.
- M9** 1972 c. xl.
- M10** 1986 c. iv.
- M11** 1991 c. 57.
- M12** [S.I. 2016/1154](#).
- M13** 2017 c. 20.
- M14** [S.I. 2010/948](#), amended by [S.I. 2011/987](#); there are other amending instruments but none is relevant.
- M15** As amended by section 46 of the [Criminal Justice Act 1982 \(c. 48\)](#).

#### **Development consent granted by the Order**

4.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), TfL is granted development consent for the authorised development.

(2) Any enactment applying to land within, adjoining or sharing a common boundary with the Order limits (other than land comprising part of the river Thames outside of the Order limits) has effect subject to the provisions of this Order.

#### **Limits of deviation**

5.—(1) Subject to paragraph (2), TfL must construct the authorised development within the Order limits and, so far as all non-linear works comprised in the authorised development are concerned, within the limits of deviation for those works shown on the works plans.

(2) In constructing or maintaining the authorised development, TfL may deviate—

- (a) laterally within the Order limits in the case of any linear work comprised in the authorised development, so that the centre line of that work may be situated up to 3 metres either side of the centre line of that work shown on the works plans; and
- (b) vertically from the levels shown on the engineering section drawings and plans—
  - (i) to any extent upwards not exceeding 0.5 metres except in relation to the parts of the authorised development referred to in column (1) of the table below, where the extent of permitted deviation for each such part is set out in column (2) of that table; and
  - (ii) to any extent downwards as may be found to be necessary or convenient.

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<b>(1) Part of authorised development</b>	<b>(2) Upwards vertical deviation limit</b>
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| Work Nos. 1(a), 1(b), 1(c) and 1(e) | (1) Where any part of the authorised development referred to in column (1) is located below the bed of the river Thames, to any extent not exceeding 1.5 metres provided that the deviation would not result in the level of the bed within the navigable channel of the river Thames being above 5.80 metres below chart datum.<br>(2) Where any part of the authorised development referred to in column (1) is located elsewhere, to any extent not exceeding 3 metres. |
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- (3) Without limitation on the scope of paragraph (1), in constructing or maintaining the authorised development TfL may—
  - (a) deviate by up to 3 metres from the points of commencement and termination of any linear work comprised in the authorised development shown on the works plans; and
  - (b) deviate from the design of any tunnel or tunnel structure and vary the number of tunnel cross-passages shown on the engineering section drawings and plans.
- (4) In this article, reference to—
  - (a) a “linear work” is a reference to any work shown on the works plans by way of a centre line; and
  - (b) a “non-linear work” is a reference to any other work shown on the works plans.

### *Streets*

#### **Street works**

- 6.—(1) TfL may, for the purposes of the authorised development, enter on so much of any street and may—
- (a) break up or open the street, or any sewer, drain or tunnel under it;
  - (b) tunnel or bore under the street;
  - (c) place apparatus in the street;
  - (d) maintain apparatus in the street or change its position; and
  - (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) and (d).
- (2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) TfL must not carry out works to any street under paragraph (1) for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

### **Application of the 1991 Act**

7.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64<sup>M16</sup> (dual carriageways and roundabouts) of the 1980 Act or section 184<sup>M17</sup> (vehicle crossings) of that Act.

(2) In Part 3 of the 1991 Act references, in relation to major highway works, to the highway authority concerned are, in relation to works which are major highway works by virtue of paragraph (1), to be construed as references to TfL.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing etc. of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by TfL under the powers conferred by article 10 (temporary stopping up and restriction of use of streets) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act<sup>M18</sup> referred to in paragraph (4) are—

- section 54<sup>M19</sup> (advance notice of certain works), subject to paragraph (6);
- section 55<sup>M20</sup> (notice of starting date of works), subject to paragraph (6);
- section 57<sup>M21</sup> (notice of emergency works);
- section 59<sup>M22</sup> (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);

section 76 (liability for cost of temporary traffic regulation); and  
section 77 (liability for cost of use of alternative route),  
and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 8 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and TfL is not by reason of any duty under that article to maintain a street to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

#### **Marginal Citations**

- M16** As amended by section 102 of, and Schedule 17 to, the [Local Government Act 1985 \(c. 51\)](#) and section 168(2) of, and Schedule 9 to, the [New Roads and Street Works Act 1991 \(c. 22\)](#).
- M17** As amended by sections 35, 37, 38 and 46 of the [Criminal Justice Act 1982 \(c. 48\)](#); paragraph 45(11) of Schedule 2 to the [Planning \(Consequential Provisions\) Act 1990 \(c. 11\)](#) and section 168 of, paragraph 9 of Schedule 8 and Schedule 9 to, the 1991 Act.
- M18** [Sections 54, 55, 57, 60, 68](#) and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the [Traffic Management Act 2004 \(c. 18\)](#).
- M19** As also amended by section 49(1) of the Traffic Management Act 2004.
- M20** As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
- M21** As also amended by section 52(3) of the Traffic Management Act 2004.
- M22** As amended by section 42 of the Traffic Management Act 2004.

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

**8.—(1)** Any street (other than a GLA Road) constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, must be maintained by and at the expense of TfL for a period of 12 months from its completion and thereafter by the street authority.

(2) Where a street (other than a GLA Road) is altered or diverted under this Order, the altered or diverted part of the street must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing with the street authority, that part of the street must be maintained by and at the expense of TfL for a period of 12 months from its completion and thereafter by the street authority.

(3) Where land not previously part of the public highway comes to form part of the public highway by virtue of the construction, diversion or alteration of a street under this Order, unless otherwise agreed with the street authority the land is deemed to have been dedicated as public highway on the expiry of a period of 12 months from completion of the street that has been constructed, altered or diverted.

(4) In any action against TfL in respect of loss or damage resulting from any failure by TfL 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 TfL 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.

(5) For the purposes of a defence under paragraph (4), the court must 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 TfL 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 TfL 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 to prove that TfL had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that TfL 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.

(6) The date of completion of any works referred to in paragraphs (1) and (2) is to be agreed between TfL and the street authority, acting reasonably.

### **Permanent stopping up of streets and private means of access**

9.—(1) Subject to the provisions of this article, TfL may, in connection with the carrying out of the authorised development, stop up each of the streets and private means of access specified in columns (1) and (2) of Parts 1, 2, 3 and 4 of Schedule 3 (permanent stopping up of highways and private means of access) to the extent specified and described in column (3) of those Parts of that Schedule.

(2) No street or private means of access specified in columns (1) and (2) of Parts 1 and 3 of Schedule 3 (being a street or private means of access to be stopped up for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street or private means of access to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street or private means of access to be stopped up is first provided and subsequently maintained by TfL, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street or private means of access until the completion and opening of the new street or private means of access in accordance with sub-paragraph (a).

(3) No street or private means of access specified in columns (1) and (2) of Parts 2 and 4 of Schedule 3 (being a street or private access to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all of the land which abuts on either side of the street or private means of access to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) TfL is in possession of the land;
- (b) there is no right of access to the land from the street or private means of access concerned;
- (c) there is reasonably convenient access to the land otherwise than from the street or private means of access concerned; or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) Not less than 28 days prior to the stopping up of each section of highway identified in columns 1 to 3 of Parts 1 and 2 of Schedule 3 TfL must erect a notice upon the highway at, or as close as reasonably practicable to, each point of stopping up, specifying the date and extent of the stopping up and, in the case of a highway mentioned in Part 1 of Schedule 3, giving details of the substitute or new highway to be provided.

(6) Where a street or private means of access has been stopped up under this article—

- (a) all rights of way over or along the street or private means of access so stopped up are extinguished; and
- (b) TfL may appropriate and use for the purposes of the authorised development so much of the site of the street or private means of access as is bounded on both sides by land owned by TfL.

(7) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) This article is subject to article 32 (apparatus and rights of statutory undertakers in stopped up streets).

#### **Temporary stopping up and restriction of use of streets**

**10.**—(1) TfL may, during and for the purposes of carrying out the authorised development, 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 limitation on the scope of paragraph (1), TfL may use any street temporarily stopped up under the powers conferred by this article and lying within the Order limits as a temporary working site.

(3) TfL must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) TfL must not temporarily stop up, alter or divert any street for which it is not the street authority without the consent of the street authority, which may attach reasonable conditions to any consent.

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

#### **Access to works**

**11.** TfL may, for the purposes of the authorised development and with the consent of the street authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as TfL reasonably requires for the purposes of the authorised development.

#### **Agreements with street authorities**

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

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening or improvement of any street under the powers conferred by this Order;

- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
  - (e) the execution in the street of any of the authorised development; or
  - (f) any such works as the parties may agree.
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) provide for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between TfL and the street authority specifying a reasonable time for completion of the works;
  - (c) provide for the dedication of any new street as public highway further to section 38 <sup>M23</sup> (power of highway authorities to adopt by agreement) of the 1980 Act; and
  - (d) contain such terms as to payment and otherwise as the parties consider appropriate.

#### Marginal Citations

**M23** As amended by section 102 of, and Schedule 17 to, the [Local Government Act 1985 \(c. 51\)](#); [section 22\(1\)](#) of the 1991 Act and paragraphs 1 and 19 of Schedule 1 to the [Infrastructure Act 2015 \(c. 7\)](#).

#### Use of private roads for construction

**13.**—(1) TfL may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised development.

(2) TfL must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act.

#### *Supplemental powers*

#### Discharge of water

**14.**—(1) Subject to paragraphs (3) and (4), TfL may use any watercourse, public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development 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 making of connections to or the use of a public sewer or drain by TfL under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991 <sup>M24</sup>.

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

(4) TfL must 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; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) TfL must 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.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016 <sup>M25</sup>.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the GLA, the Homes and Communities Agency, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a sewerage undertaker, a Mayoral development corporation or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 <sup>M26</sup>, have the same meaning as in that Act.

#### **Marginal Citations**

**M24** 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [sections 36\(2\)](#) and 99 of the [Water Act 2003 \(c. 37\)](#) and paragraph 16(1) of Schedule 3 to the [Flood and Water Management Act 2010 \(c. 29\)](#).

**M25** S.I. 2016/1154.

**M26** 1991 c. 57.

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

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

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for public use.

(3) Subject to paragraph (5), for the purpose of determining how the functions under this article are to be exercised TfL may enter and survey—

- (a) any building falling within paragraph (1) and any land within its curtilage; and
- (b) where necessary or expedient, land which is adjacent to the building falling within paragraph (1) but outside its curtilage (whether or not such adjacent land is inside or outside the Order limits),

and place on, leave on and remove from the land monitoring apparatus.

(4) For the purpose of carrying out protective works to a building under this article TfL 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 (whether

or not such adjacent land is inside or outside the Order limits) but not any building erected on it,

and in either case TfL may take exclusive possession of the building and land if this is reasonably required for the purpose of carrying out the protective works.

(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 land within its curtilage) or land;
- (c) a right under paragraph (4)(a) to enter and take possession of a building (and land within its curtilage); or
- (d) a right under paragraph (4)(b) to enter and take possession of land,

TfL must, 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 a notice is served under paragraph (5)(a), (5)(c) or (5)(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 of 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 68 (arbitration).

(7) TfL must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(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 development carried out in the vicinity of the building is first opened for public use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

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

(9) Without affecting article 38 (no double recovery), nothing in this article relieves TfL from any liability to pay compensation under section 152<sup>M27</sup> (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

(11) Subject to paragraph (6), section 13<sup>M28</sup> (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125<sup>M29</sup> (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and
- (c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

**Marginal Citations**

**M27** As amended by [S.I. 2009/1307](#).

**M28** As amended by sections 62(3) and 139(4)-(9) of, paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 223 to, the [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#).

**M29** As amended by section 190 of, and paragraph 17 of Schedule 16 to, the [Housing and Planning Act 2016 \(c. 22\)](#).

**Authority to survey and investigate land**

**16.**—(1) TfL may for the purposes of this Order enter on—

- (a) any land within the Order limits; and
- (b) where reasonably necessary, any land which is adjacent to but outside the Order limits,

and—

- (i) survey or investigate the land;
- (ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as TfL thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

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

- (a) must, if so required, before or after entering the land, produce written evidence of their 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 are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority;  
or
- (b) in a private street without the consent of the street authority.

(5) TfL must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

**Work in the river Thames: conditions**

**17.**—(1) Construction of the authorised development must be carried out so that—

- (a) at any time, the suspension of the public right of navigation under articles 29(3) (temporary use of land for carrying out the authorised development) or 30(3) (temporary use of land for maintaining the authorised development) applies to no more of the river than is necessary in the circumstances; and
  - (b) if it becomes necessary for such suspension to relate to the whole width of the river within the Order limits, all reasonable steps are taken to secure that the period of suspension is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part where the public right of navigation is so suspended.
- (2) Not later than 40 business days prior to the proposed commencement date of any suspension of the public right of navigation under article 29(3) or 30(3), TfL must give notice to the PLA, except in the case of an emergency when TfL must give such notice as is reasonably practicable.
- (3) A notice given under paragraph (2) must provide details of the proposed suspension, including particulars of—
- (a) commencement date;
  - (b) duration; and
  - (c) the affected area,
- and must include an explanation of the need for the proposed suspension.
- (4) Any suspension of the public right of navigation under article 29(3) or 30(3) must not take place except in accordance with the approval in writing given by the PLA and any conditions imposed by the PLA under this article or determined in accordance with article 68 (arbitration).
- (5) The PLA may in relation to any application for approval under this paragraph (4) impose reasonable conditions for any purpose described in paragraph (6).
- (6) Conditions imposed under paragraph (5) may include conditions as to—
- (a) the limits of any area subject to a temporary suspension of the public right of navigation;
  - (b) the duration of any temporary suspension;
  - (c) the means of marking or otherwise providing warning in the river Thames of any area affected by a temporary suspension of the public right of navigation; and
  - (d) the use by TfL of the area subject to any temporary suspension so as not to interfere with any other part of the river Thames or affect its use.
- (7) Following an approval of any such suspension given by the PLA under paragraph (4) or determined in accordance with article 68, the PLA must issue a notice to mariners within 10 business days of the approval, giving the commencement date and other particulars of the suspension to which the approval relates, and that suspension will take effect on the date specified and as otherwise described in the notice.
- (8) Subject to paragraph (9), an application for approval under this article is deemed to have been refused if it is neither given nor refused within 30 business days of the PLA receiving the notice under paragraph (2).
- (9) An approval of the PLA under this article is not deemed to have been unreasonably withheld, and approval is not deemed to have been refused, if approval within the time limited by paragraph (8) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.
- (10) Except in the case of an emergency, TfL must notify the owner of any mooring and the owner or master of any vessel or structure likely to be materially affected by any proposal to exercise the powers conferred by this Order at least 35 days before the exercise of those powers.
- (11) If—

- (a) by reason of the exercise of the powers conferred by this Order it is reasonably necessary for the owner of any mooring to incur costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating that mooring, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the owner of the mooring in question gives to TfL not less than 28 days' notice of its intention to incur such costs, and acting reasonably takes into account any representations which TfL may make in response to the notice within 14 days of the receipt of the notice,

TfL must pay the costs reasonably so incurred by the owner of that mooring.

(12) A person may not without the consent in writing of TfL (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, any work constructed or used in connection with the authorised development; or
- (b) remove, move or otherwise interfere with any work, machinery, apparatus, tools or other things in use or intended for use in constructing the authorised development.

### **Felling or lopping of trees**

**18.**—(1) TfL may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if TfL reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), TfL must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

**Changes to legislation:**

There are currently no known outstanding effects for the The Silvertown Tunnel Order 2018, PART 2.