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STATUTORY INSTRUMENTS

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**2018 No. 574**

**The Silvertown Tunnel Order 2018**

**PART 6**

**MISCELLANEOUS AND GENERAL**

**Benefit of Order**

**58.**—(1) Subject to article 59 (transfer of benefit of Order, etc.) and paragraph (2), the provisions of this Order conferring functions on TfL have effect solely for the benefit of TfL.

(2) Paragraph (1) does not apply to the works for which the consent is granted by this Order for the express protection, benefit or accommodation of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

**Transfer of benefit of Order, etc.**

**59.**—(1) TfL may, regardless of any provision in any enactment, enter into agreements—

- (a) to transfer, charge or otherwise dispose of to another person (“the transferee”) any interest of TfL in the authorised development or TfL’s right to construct, maintain, use or operate the authorised development; or
- (b) to grant to another person (“the grantee”) for a period agreed between TfL and the grantee any interest of TfL in the authorised development or TfL’s right to construct, maintain, use or operate the authorised development; and
- (c) that are connected with or consequential on any agreement entered into under sub-paragraph (a) or (b),

and, with the consent of the Mayor of London, TfL may provide for the transferee, the grantee or another person to exercise or be responsible for any functions of TfL relevant to those agreements, including any of its functions under this Order, either exclusively or concurrently with TfL or any other person.

(2) Any agreement referred to in paragraph (1) may provide (to the extent TfL considers necessary in connection with the design, construction, financing, funding, maintenance, use or operation of the authorised development) for—

- (a) any matters that are connected with the matters referred to in that paragraph or are consequential on them;
- (b) the financing or defraying of, or the making of contributions by TfL or by any other person towards, the cost of designing, constructing, maintaining, using or operating the authorised development;
- (c) TfL to provide services and facilities to the transferee, grantee or any other person on such terms (including as to payment) as the parties think fit; and
- (d) TfL or the transferee, grantee or any other person to provide guarantees, indemnities or any other form of security.

(3) Where an agreement has been made under paragraph (1), references in this Order, or in any document certified under article 65 (certification of documents), to TfL are to be read as including references to the transferee, the grantee or any other person who may exercise, enjoy or be responsible for any functions of TfL pursuant to that agreement.

(4) Paragraph (3) does not apply to—

- (a) the code of construction practice mentioned in paragraph 5 of Schedule 2 (requirements); and
- (b) references to “the TfL Board” in Procedure 1 and Procedure 2 of the charging policy.

(5) The exercise by any person further to any agreement made under paragraph (1), of the functions conferred by or under this Order or any other enactment, is subject to the same restrictions, liabilities and obligations as would apply by or under this Order if those powers were exercised by TfL.

(6) Subject to paragraph (7), any consent given by the Mayor of London under paragraph (1) may be given subject to such reasonable terms and conditions as the Mayor considers appropriate in the circumstances.

(7) The Mayor of London must not give consent under paragraph (1) to any proposal for the transfer of any compulsory acquisition or temporary possession function unless the Secretary of State has certified in writing that the Secretary of State is satisfied that the person proposed to exercise or be responsible for that function has sufficient resources to discharge all associated compensation liabilities.

(8) TfL must within 10 business days after entering into an agreement under paragraph (1) in relation to which any functions of TfL in respect of the deemed marine licence granted by article 62 are transferred to another party, notify the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) and details of the extent, nature and scope of the functions transferred or otherwise dealt with which relate to the deemed marine licence granted under article 62.

(9) In this article—

- (a) “compulsory acquisition or temporary possession function” means any function of TfL under articles 19, 22, 23, 27, 28, 29 and 30;
- (b) “functions” means statutory and other powers, duties, rights, interests and obligations;
- (c) references to the authorised development include references to any land held in connection with the authorised development; and
- (d) references to the authorised development include references to the provisions of this Order relating to the use and operation of the Blackwall Tunnel.

### **Application of landlord and tenant law**

**60.**—(1) This article applies to any agreement entered into by TfL under article 59 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Traffic regulation measures**

**61.**—(1) Subject to the provisions of this article, TfL may, for the purposes of the authorised development—

- (a) make provision, in respect of those roads specified in column (2) of Part 1 of Schedule 11 (traffic regulation measures, etc.), as to the speed limit and restricted road status of those roads as specified in column (3) of that Part of that Schedule;
- (b) make provision, in respect of those roads specified in column (2) of Part 2 of Schedule 11, as to the clearway status of, and the application of other prohibitions to, those roads as specified in column (3) of that Part of that Schedule;
- (c) make provision, in respect of those roads specified in column (2) of Part 3 of Schedule 11, as to prescribed routes to apply to those roads as specified in column (3) of that Part of that Schedule;
- (d) in respect of those roads specified in column (2) of Part 4 of Schedule 11, revoke or vary the orders specified in column (3) of that Part of that Schedule in the manner specified in column (4) of that Part of that Schedule;
- (e) vary the orders specified in column (2) of Part 5 of Schedule 11 in the manner specified in column (3) of that Part of that Schedule; and
- (f) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act in so far as it is inconsistent with any prohibition, restriction or other provision made by TfL under this paragraph.

(2) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) (regulations in relation to orders and notices under the 1984 Act) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011<sup>(1)</sup> when used in accordance with regulation 3(5) of those regulations.

(3) Without limiting the scope of 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, TfL may, in so far as necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (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, 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 TfL.

(4) The power conferred by paragraph (3) may be exercised at any time prior to the expiry of 24 months from the opening of the Silvertown Tunnel for public use but subject to paragraph (7)

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(1) [S.I. 2011/935](#).

any prohibition, restriction or other provision made under paragraph (3) may have effect both before and after the expiry of that period.

(5) TfL must not exercise the powers conferred by paragraph (1) or (3) unless TfL has—

(a) given not less than—

- (i) 12 weeks' notice in writing of TfL's intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
- (ii) 4 weeks' notice in writing of TfL's intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the road is situated and that notice must include the time periods within which the traffic authority may specify the manner in which, under sub-paragraph (b), TfL must advertise its intention to exercise the powers conferred by paragraph (1) or (3); and

(b) advertised TfL's intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of TfL's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of TfL's intention in the case of sub-paragraph (a)(ii).

(6) Any prohibition, restriction or other provision made by TfL under paragraph (1) or (3)—

(a) has 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 (power of local authorities to provide parking spaces) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject;

(b) is deemed to be a traffic order for the purposes of, as the case may be—

- (i) Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act; or
- (ii) Part 2 (bus lanes) to the London Local Authorities Act 1996(2); and

(c) must be advertised in the same manner as TfL's intention to make the prohibition, restriction or other provision was under paragraph (5)(b).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by TfL from time to time by subsequent exercise of the powers conferred by paragraph (1) or (3) within a period of 24 months from the opening of the Silvertown Tunnel for public use.

(8) Before exercising the powers conferred by paragraphs (1) or (3) TfL must consult such persons as TfL considers necessary and appropriate and have regard to the representations made to TfL by any such person.

(9) In the case of Saffron Avenue as identified in Part 2 of Schedule 11 (traffic regulation measures, etc.) (and shown on sheet 4 of the traffic regulation measures (clearways and prohibitions) plans), the powers conferred by this article cannot be exercised by TfL without the consent of the owner of that road.

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

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(2) 1996 c. ix.

### **Deemed marine licence**

**62.** The marine licence set out in Schedule 12 (deemed marine licence) is deemed to have been issued under Part 4 of the 2009 Act for the licensed activities set out in Part 1, and subject to the licence conditions set out in Part 2, of that licence.

### **Defence to proceedings in respect of statutory nuisance**

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

(a) the defendant shows that the nuisance—

(i) relates to premises used by TfL for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974<sup>(4)</sup>;

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by TfL for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

**64.** Schedule 13 (protective provisions) has effect.

### **Certification of documents**

**65.**—(1) As soon as practicable after the making of this Order, TfL must submit copies of each of the plans and documents set out in Schedule 14 (documents to be certified) to the Secretary of State for certification as true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 14 requires to be amended to reflect the terms of the Secretary of State's decision to make this Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the document required to be submitted for certification under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(4) TfL must, following certification of the plans and documents in accordance with paragraph (1), make those plans and documents available in electronic form for inspection by members of the public.

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(3) 1990 c. 43; there are amendments that are not relevant to this Order.

(4) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.

### **Silvertown Tunnel Implementation Group**

**66.**—(1) TfL must establish and fund the reasonable secretarial and administrative costs of a consultative body to be known as the Silvertown Tunnel Implementation Group (in this Order referred to as “STIG”).

(2) STIG will comprise one representative of each of the following bodies—

- (a) TfL;
- (b) the GLA;
- (c) the Council of the London Borough of Barking and Dagenham;
- (d) the Council of the London Borough of Bexley;
- (e) the Council of the London Borough of Bromley;
- (f) the City of London Corporation;
- (g) the Council of the Royal Borough of Greenwich;
- (h) the Council of the London Borough of Hackney;
- (i) the Council of the London Borough of Lewisham;
- (j) the Council of the London Borough of Newham;
- (k) the Council of the London Borough of Redbridge;
- (l) the Council of the London Borough of Southwark;
- (m) the Council of the London Borough of Tower Hamlets;
- (n) the Council of the London Borough of Waltham Forest; and
- (o) Highways England, or any other person which in place of Highways England—
  - (i) is for the time being the traffic authority for the Dartford river crossings between Dartford, Kent and Thurrock, Essex; or
  - (ii) is for the time being the traffic authority for the proposed new river crossing known as the Lower Thames Crossing east of Gravesend, Kent and Tilbury, Essex, if the crossing is granted development consent under the 2008 Act.

(3) Each body mentioned in paragraph (2)(b) to (2)(o) above must notify TfL of the identity of its nominated representative.

(4) If any person nominated under paragraph (3) cannot attend a STIG meeting, the nominating body may nominate a person (on an occasional or standing basis, as it determines) to act as the nominating body’s substitute representative at the meeting.

(5) TfL must consult the other members of STIG on the following matters relating to implementation of the authorised development—

- (a) the extent, nature and duration of monitoring to be implemented in accordance with the monitoring and mitigation strategy;
- (b) the proposals for the initial bus services that will operate through the tunnels when the Silvertown Tunnel opens for public use;
- (c) the monitoring reports produced in accordance with the monitoring and mitigation strategy;
- (d) any proposed revisions to the charging policy under article 53 (the charging policy); and
- (e) the level of charges required to be paid for use of the tunnels under article 54 (power to charge for use of the tunnels) and any exemptions and discounts.

(6) In taking any decision in respect of any of the matters set out in paragraph (5), TfL must have regard to any recommendations or representations made by a member of STIG in response to the consultation carried out under that paragraph.

(7) Unless otherwise agreed by STIG, TfL must convene a meeting of STIG, chaired by a representative elected by the members of STIG, at least twice a year on a date to be determined by TfL, including on each occasion that TfL publishes a monitoring report in accordance with the monitoring and mitigation strategy.

(8) The first meeting of STIG must be held not less than three years before the date on which the Silvertown Tunnel is expected to open for public use.

(9) Part VA (access to meetings and documents of certain authorities, committees and sub-committees) of the Local Government Act 1972(5) and the Public Bodies (Admission to Meetings) Act 1960(6) do not apply to STIG or to its meetings or proceedings.

(10) TfL must publish on its website agendas, reports, minutes and other relevant documents relating to the operation of STIG as soon as reasonably practicable after they become available.

### **Service of notices**

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) 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 (references to service by post) of the Interpretation Act 1978(7) 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 is taken to be fulfilled only where—

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(5) 1972 c. 70.

(6) 1960 c. 67.

(7) 1978 c. 30.

- (a) 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;
  - (b) the notice or document is capable of being accessed by the recipient;
  - (c) the notice or document is legible in all material respects; and
  - (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.
- (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 part of that notice or other document the sender must 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 must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article must not be taken to exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

### **Arbitration**

**68.** Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must 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.

### **Consents, agreements and approvals**

**69.—**(1) Where any application is made to a relevant authority, the consent, agreement or approval concerned must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) If a relevant authority which has received an application fails to notify TfL of its decision before the end of the period of 28 days beginning with the date on which the application was received, the relevant authority is deemed to have given its consent, agreement or approval, as the case may be.

(3) Any application to which this article applies must include a written statement that the provisions of paragraph (2) apply to that application.

(4) In this article—

“application” means an application or request for any consent, agreement or approval required or contemplated by articles 6 (street works), 8 (construction and maintenance of new, altered or diverted streets), 10 (temporary stopping up and restriction of use of streets), 11 (access to works), 16 (authority to survey and investigate land) and 61 (traffic regulation measures); and  
 “relevant authority” means a planning authority, a traffic authority, a highway authority or a street authority.

