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STATUTORY INSTRUMENTS

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**2017 No. 830**

The London Overground (Barking  
Riverside Extension) Order 2017

PART 2

WORKS PROVISIONS

*Principal powers*

**Power to construct and maintain works**

4.—(1) TfL may construct and maintain the scheduled works.

(2) Subject to article 5 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (6), TfL may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works required for the strengthening, improvement, repair or reconstruction of any street;
- (b) works for the strengthening, alteration or demolition of any building;
- (c) works to erect and construct offices, head houses and other buildings, machinery, apparatus, works and conveniences;
- (d) railway electrification and signalling works;
- (e) station services and finishes;
- (f) means of access, including footpaths;
- (g) retaining walls, fencing, barriers, wing walls, shafts, drainage works and culverts;
- (h) works to remove or alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (i) works to alter the course of, or otherwise interfere with, watercourses;
- (j) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works;
- (k) facilities and works for the benefit or protection of land or premises affected by the authorised works;
- (l) the felling of trees; and
- (m) earthworks required for the carrying out of the authorised works.

(4) Subject to paragraph (6), TfL may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(5) TfL may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works—

(a) within the Order limits; or

(b) within the boundaries of any street abutting the Order limits or which has a junction with such a street.

(7) The powers conferred by this article may not be exercised within the boundaries of a street outside of the Order limits without the consent of the street authority but that consent must not be unreasonably withheld.

(8) In constructing and maintaining the scheduled works TfL may lay and install such number of railway lines, switches and crossings as may be necessary or expedient.

(9) Section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991<sup>(1)</sup> and any byelaws made under that Act or the Water Resources Act 1991<sup>(2)</sup> do not apply to anything done under or in pursuance of this Order.

(10) The authorised works may be constructed and maintained under the powers conferred by this article regardless of anything contained in, or done under, Part 1 (registration) of, or Schedule 2 (non-registration or mistaken registration under the 1965 Act) to, the Commons Act 2006<sup>(3)</sup>.

(11) Where any maintenance of works is carried out under this article, such works may only be undertaken provided they have no greater effect than as described in the environmental statement.

### **Power to deviate**

**5.—**(1) In constructing or maintaining any of the scheduled works, TfL may—

(a) deviate laterally from the lines or situations shown on the deposited plans within the Order limits; and

(b) deviate vertically from the levels shown on the deposited sections—

(i) to any extent upwards not exceeding 3 metres; and

(ii) subject to article 21 (power to acquire land) to any extent downwards as may be found to be necessary or convenient.

(2) Without limitation on the scope of paragraph (1), in constructing or maintaining the scheduled works TfL may within the limits mentioned in paragraph (1)—

(a) deviate from their points of commencement and termination shown on the deposited plans and the deposited sections; and

(b) in relation to any viaduct, viaduct structure or other structure above ground level, deviate from the design and location shown on the deposited plans and the deposited sections as it thinks fit, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of the ground.

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<sup>(1)</sup> 1991 c. 59.

<sup>(2)</sup> 1991 c. 57.

<sup>(3)</sup> 2006 c. 26.

## Streets

### Power to alter layout, etc., of streets

6.—(1) TfL may for the purposes of the authorised works alter the layout of any street within the Order limits and the layout of any street abutting the Order limits or which has a junction with such a street and without limitation on the scope of this power TfL may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) carry out works for the provision, removal, suspension or alteration of parking places, loading bays, bus lanes, bus stop clearways and bus laybys.

(2) The powers conferred by paragraph (1) in relation to any street abutting the Order limits or which has a junction with such a street must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

### Power to keep apparatus in streets

7.—(1) TfL may, for the purposes of or in connection with the construction, maintenance and use of the authorised works, alter, move, remove, place and maintain in any street within the Order limits any work, equipment or apparatus including foundations, road islands, substations, electric lines and any electrical or other apparatus.

(2) In this article—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “electric line” has the meaning given by section 64(1) (interpretation etc. of Part 1) of the Electricity Act 1989(4); and
- (c) the reference to any work, equipment, apparatus or other thing in a street includes a reference to any work, equipment, apparatus or other thing under, over, along or upon the street.

### Power to execute street works

8. TfL may, for the purposes of and to the extent necessary for the construction of the authorised works, enter upon any of the streets within the Order limits and any street abutting the Order limits or which has a junction with such a street and break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street.

### Stopping up of streets

9.—(1) Subject to the provisions of this article TfL may, in connection with the construction of the authorised works, stop up each of the streets specified in columns (1) and (2) of Part 1 (streets to be stopped up for which a substitute is to be provided) of Schedule 2 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the traffic regulation plans, in column (3) of Part 1 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 2 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless either—

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(4) 1989 c. 29.

- (a) the new street to be substituted for it, and which is specified in relation to it by reference to one of the scheduled works mentioned 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 is first provided and then maintained by TfL to the reasonable satisfaction of the street authority until completion of the new street in accordance with sub-paragraph (a).
- (3) Where a street has been stopped up under this article—
- (a) all rights of way over or along it are extinguished; and
  - (b) TfL may appropriate and use for the purposes of its undertaking so much of the site of the street as is bounded on both sides by land owned by TfL.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to paragraphs 37 and 38 of Part 3 (protection for electricity, gas, water and sewerage undertakers) of Schedule 8 (protective provisions).

### **Temporary stopping up and diversion of streets**

- 10.**—(1) TfL may, during and for the purposes of the execution of the authorised works 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 stopped up under the powers conferred by this article 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 exercise of the powers conferred by this article if there would otherwise be no such access.
- (4) Without limitation on the scope of paragraph (1), TfL may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Part 2 (streets to be temporarily stopped up) of Schedule 2 (streets to be stopped up).
- (5) TfL must not exercise the powers conferred by this article—
- (a) in relation to any street specified in Part 2 of Schedule 2 without first consulting the street authority; and
  - (b) in relation to any other street, without the consent of the street authority, which may attach reasonable conditions to any consent, but the consent must not be unreasonably withheld.
- (6) 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 of the 1961 Act.

### **Access to works**

- 11.** TfL may, for the purposes of the authorised works—
- (a) form and lay out means of access, or alter or improve existing means of access, in the locations marked on the deposited plans; and
  - (b) form and lay out such other means of access or alter or improve existing means of access at such locations within the Order limits as TfL reasonably requires for the purposes of the authorised works, as may be approved by the highway authority, but such approval must not be unreasonably withheld.

### Agreements with street authorities

- 12.—(1) A street authority and TfL may enter into agreements with respect to—
- (a) the strengthening or improvement of any street under the powers conferred by this Order;
  - (b) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised railway;
  - (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (d) the execution in the street of any of the works referred to in article 8 (power to execute street works).
- (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; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### Use of private roads for construction

13.—(1) TfL may use any private road within the Order limits or any private road abutting the Order limits or which has a junction with such a road 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 works.

(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) TfL may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain 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>(5)</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; and such consent may be given subject to such terms and conditions as that person may reasonably impose but must not be unreasonably withheld.

- (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, but such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

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(5) 1991 c. 56. Section 106 was amended by sections 35(1) and (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).

(5) TfL must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) 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 or oil or matter in suspension or any other potentially polluting material.

(7) 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>(6)</sup>.

(8) If a person who receives an application for consent or approval fails to notify TfL of a decision within 28 days of receiving that application for consent under paragraph (3) or approval under paragraph (4)(a) then that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article, other than references to “public sewer or drain” or “watercourse”, expressions used both in this article and in the Water Resources Act 1991<sup>(7)</sup> have the same meaning as in that Act.

### **Water abstraction**

**15.**—(1) The restriction imposed by section 24(1) (restrictions on abstraction) of the Water Resources Act 1991 does not apply in relation to the abstraction of water for the purposes of, or in connection with, the construction of the authorised works.

(2) Section 48A(1) (duty not to cause loss or damage to another by the abstraction of water) of the Water Resources Act 1991<sup>(8)</sup> does not apply in relation to the abstraction of water in connection with the exercise of the powers conferred by this Order.

(3) Where—

- (a) TfL causes loss or damage to another person by the abstraction of water in connection with the exercise of the powers conferred by this Order; and
- (b) the circumstances are such that causing the loss or damage would have constituted breach of the duty under section 48A(1) of the Water Resources Act 1991, but for paragraph (2),

TfL must compensate the other person for the loss or damage.

(4) Compensation under paragraph (3) is to be assessed on the same basis as damages for breach of the duty under section 48A(1) of the Water Resources Act 1991.

(5) Section 48A(5) (prohibition of claims in respect of loss or damage caused by abstraction of water which are not claims under that section) of the Water Resources Act 1991 has no application to claims under this article or under Part 3 of Schedule 8 (protection for the Environment Agency).

(6) In this article, “abstraction” has the same meaning as in the Water Resources Act 1991.

### **Protective works to buildings**

**16.**—(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 to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or

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<sup>(6)</sup> S.I. 2016/1154.

<sup>(7)</sup> 1991 c. 57.

<sup>(8)</sup> Section 48A was inserted by section 24(1) of the Water Act 2003 (c. 37).

(b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised TfL may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land monitoring apparatus.

(4) For the purpose of carrying out protective works under this article to a building TfL may (subject to paragraphs (5) and (6)) with all necessary plant and equipment—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land,

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;
- (c) a right under paragraph (4)(a) to enter and take possession of a building or land; 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 notice is served under paragraph (5)(a), (c) or (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 and take possession of the building or land to be referred to arbitration under article 45 (arbitration).

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

(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 works constructed within the vicinity of the building is first opened for use, it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

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

(9) Without affecting article 44 (no double recovery), nothing in this article relieves TfL from any liability to pay compensation under section 10(2)(9) (further provision as to compensation for injurious affection) of the 1965 Act.

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

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

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(9) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

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

### **Planning permission**

17. Any planning permission which is deemed by a direction given under section 90(2A)(10) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3) (a) of that Act (cases in which land is to be treated as operational land).

### **Power to survey and investigate land, etc.**

18.—(1) TfL may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as TfL thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
- (e) enter on the land for the purpose of exercising any of the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered, or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 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 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 a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(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 of the 1961 Act.

(6) If either a highway authority or a street authority fails to notify TfL of its decision within 14 days of receiving the application for consent under paragraph (4), that authority is deemed to have granted consent.



### **Power to lop trees overhanging the authorised works**

**19.**—(1) TfL may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it 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 works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), TfL must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(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 of the 1961 Act.

### **Obstructing construction of the authorised works**

**20.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of TfL 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 TfL,

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