

## **CROSSRAIL BILL**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Crossrail Bill as (re)introduced in the House of Commons on 8th November 2007. They have been prepared by the Department for Transport in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **SUMMARY AND BACKGROUND**

3. The main purpose of this Bill is to secure the powers necessary to build Crossrail. Crossrail will consist of new rail tunnels running west-east through central London connecting directly with existing surface rail routes to Maidenhead and Heathrow in the west and Shenfield and Abbey Wood in the east. By connecting the major London rail terminals of Paddington and Liverpool Street, Crossrail will enable interconnecting mainline train services to cross the centre of London via a number of new purpose-built stations.

#### **HYBRID BILLS**

4. The Bill is a Hybrid Bill because it contains provisions which have an impact on the interests of particular individuals, as well as containing provisions of a more general public nature. A Hybrid Bill is a Public Bill promoted by the Government which is treated like a Private Bill for part of its passage through Parliament, in addition to being considered in the same way as any other Public Bill.

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5. This means that individuals, groups and organisations opposed to the Bill have an opportunity to oppose it or to seek its amendment before a Select Committee in either or both Houses. Those who are especially and directly affected by the Bill may “petition” against it. Petitioning against the Crossrail Bill in the House of Commons took place during previous Parliamentary sessions. There is a second opportunity to petition against the Bill in the House of Lords, where petitioners may have their arguments heard by a Select Committee of that House.

6. The House of Commons Information Office Factsheet on Hybrid Bills (L5) can be found at <http://www.parliament.uk/documents/upload/105.pdf>.

## **THE LINK WITH PREVIOUS CROSSRAIL BILLS AND “CARRY-OVER”**

7. The Bill is in the same form as the Crossrail Bill stood at the conclusion of the Parliamentary session 2006-07 in which it was amended by a House of Commons Select Committee, that Committee having received 466 petitions against the Bill (of which 205 were pursued before Committee). Proceedings on the predecessor Bill were suspended at the end of the last Parliamentary session. However, by virtue of a motion passed by the House of Commons on 23rd October 2007, the Bill (as introduced in the 2007-08 session) is deemed to have been read a first and second time and, in effect, to have reached the same stage as its predecessor in the process of Parliamentary scrutiny. This effect is commonly referred to as the “carry-over” of the earlier Bill. Carry-over is a common feature of Hybrid Bills because of the amount of Parliamentary time and scrutiny they require.

8. The Crossrail Bill was originally introduced in its current form (less some amendments) in 2005. Since its original introduction, it has been carried over three times in all. Prior to re-introduction in November 2007, the Bill had already received a First and Second Reading and had concluded its passage through a House of Commons Select Committee. In the 2007-08 session it is expected that the House of Commons will conclude its scrutiny of the Bill (in accordance with procedures applying to all public Bills) and that thereafter the Bill should be considered by the House of Lords (including by way of a Committee of that House which will consider further petitions against the Bill).

## **OVERVIEW OF THE STRUCTURE**

9. The Bill comprises sixty-six clauses and sixteen Schedules. The main provisions of the Bill provide for:

- the authorisation of works necessary to build Crossrail and associated works. These powers are vested in “the nominated undertaker” and the Bill gives the Secretary of State the ability to nominate that undertaker. The Department for Transport is currently being assisted in taking the project forward by Cross London Rail Links Limited (CLRL) – a Department for Transport/Transport for London joint venture company. However, no binding agreements have yet been reached as to the final form of project delivery (including the letting and management of major construction contracts) and so flexibility is still required;

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- the acquisition of land and interests in land necessary for those works. The powers of compulsory purchase sought in the Bill are vested in the Secretary of State but could also be transferred to the Greater London Authority or Transport for London, again to provide flexibility in implementation. The compulsory purchase powers in the Bill would expire five years after Royal Assent, though they could be extended;
- the establishment of a planning and heritage regime for the works. The former seeks to give local planning authorities and the various statutory bodies an appropriate degree of control over the planning aspects of the project (and will be augmented by other arrangements, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). Heritage issues will also be the subject of separate agreements with English Heritage and the local authorities;
- the application of existing railway and other miscellaneous legislation to Crossrail. Chief amongst these are the provisions which seek to establish the railways regulatory regime which will apply to Crossrail and its interface with the existing network;
- the transfer by transfer scheme of property, rights and liabilities from CLRL or the Secretary of State, or their wholly-owned subsidiaries, or, with their consent, the GLA, TfL, the London Development Agency or any of their subsidiaries, that may be necessary to ensure that the nominated undertaker is capable of delivering the project; and
- the devolution of control of the Crossrail project to the Greater London Authority or Transport for London (or a combination of the two).

10. The provisions of the Bill and the legislative framework that it seeks to establish are similar to those in the Channel Tunnel Rail Link Act 1996 (“the 1996 Act”), the last Hybrid Bill for a railway project. This is because the 1996 Act has been put to the test and by and large has worked well (although some changes from the 1996 Act framework have been made, either as a result of the particular requirements of Crossrail or following experience in implementing the 1996 Act).

11. A copy of the 1996 Act can be found at <http://www.hms.gov.uk/acts/acts1996/1996061.htm>.

## **COMMENTARY ON CLAUSES AND SCHEDULES**

### **Works**

#### **Clause 1: Construction and maintenance of scheduled works**

12. *Clause 1(1)* authorises the nominated undertaker to construct and maintain the works necessary for Crossrail. The principal works necessary – the so called “scheduled works” – are listed in Schedule 1 and are also shown on the plans and sections deposited with the Bill.

13. *Clause 1(2)* requires, subject to clause 1(3), the scheduled works to be constructed in the lines or situations, and on the levels, shown on the deposited plans and sections. The

plans and sections therefore give an indication of where the works will be constructed. Also, if, in the case of a station, depot or shaft, the deposited sections show an upper limit, the relevant works must be constructed within that limit.

14. *Clause 1(3)* allows the nominated undertaker to construct or maintain a scheduled work in a different lateral position from that shown on the plans, as long as it is within the area shown for the work on the plans (the “limit of deviation” for the work). This flexibility, and the flexibility provided by clause 1(4) and 1(5), is customary in Bills for railway projects and reflects the fact that some movement may be necessary, for example to avoid hidden obstacles that are only discovered once construction is underway.

15. *Clause 1(4)* allows the nominated undertaker to deviate in respect of works to any extent downwards.

16. *Clause 1(5)* allows the nominated undertaker to deviate in respect of works upwards to an extent of three metres, save in respect of the works identified in clause 1(5)(a) where the upward limit of deviation is six metres.

17. However, *Clause 1(6)* provides that where an upper limit for a station, depot or shaft is shown on the deposited sections, the power to deviate is subject to that upper limit.

## **Clause 2: Works: further and supplementary provisions**

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

## **Clause 3: Highways**

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

## **Clause 4: Overhead lines**

20. *Clause 4(1)* disapplies the normal consents regime established under the Electricity Act 1989 for the installation of overhead electric lines on land that is within the limits of deviation for the scheduled works or the land required for Crossrail (the “limit of land to be acquired or used”). The limits of deviation and the limit of land to be acquired or used taken together are referred to in these Explanatory Notes as “the Bill limits”.

21. *Clause 4(2)* brings into effect Schedule 4, which establishes a replacement consents regime for such lines.

22. *Clause 4(3)* provides that once the consent granted under Schedule 4 is revoked or expires, the line to which it relates will revert to being subject to the Electricity Act 1989.

23. *Clause 4(4)* provides that any consent granted under Schedule 4 by the Secretary of State for Transport and the Secretary of State for Business, Enterprise and Regulatory

Reform, acting jointly, may include the grant of deemed planning permission, with or without conditions.

## **Land**

### **Clause 5: Temporary possession and use**

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

### **Clause 6: Acquisition of land within limits shown on deposited plans**

25. *Clause 6(1)* authorises the Secretary of State, rather than the nominated undertaker, to acquire compulsorily the land required for Crossrail within the Bill limits.

26. *Clause 6(2)* provides that, without prejudice to the general power granted by clause 6(1), the land identified in columns (1) and (2) of the table in Part 1 of Schedule 6 may be acquired or used for the purpose set out in column (3) of the table. This table therefore gives an indication of the purposes for which certain parcels of land may be acquired or used (for example, for utility diversions, means of access, or for a worksite).

27. *Clause 6(3)* brings into effect Parts 2 and 3 of Schedule 6, which deal with the application of legislation relating to compulsory purchase and supplementary provisions.

28. *Clause 6(4)* provides that the power granted by subsection (1) shall not apply to land if the surface of the land is comprised in a highway and the land is specified in the table in paragraph 15(2) of Schedule 3.

29. *Clause 6(5)* provides that the power granted by subsection (1) shall not apply to any land shown as being required temporarily, unless the land is also specified in the table in paragraph 11(1) of Schedule 6. In that case the power does extend to the acquisition of subsoil at a depth greater than 9 metres from the surface of such land.

30. *Clause 6(6)* provides that the compulsory purchase power granted by subsection (1) shall expire 5 years after the Bill secures Royal Assent.

31. *Clause 6(7)* allows the Secretary of State, by order, to extend the time limit in subsection (6). This extension may be done only once in relation to any particular bit of land, and the time limit may be extended by no more than five years. Any such order is subject to special parliamentary procedure.

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

32. *Clause 7(1)* allows the Secretary of State to acquire compulsorily land outside the Bill limits, if it is needed in connection with Crossrail.

33. *Clause 7(2)* and (3) enable the Secretary of State to acquire land within the Bill limits, if it is needed in connection with Crossrail, but restrict the power so that it only applies where the power under clause 6(1) does not. The difference between the two powers is that the

former requires the making of a compulsory purchase order, whereas the latter does not (see paragraph 2 of Schedule 6).

34. *Clause 7(4)* makes it clear that land may be acquired under these provisions for certain purposes, such as for the relocation of drainage or utility undertakers' apparatus, which can sometimes be needed some distance from the line of the railway itself, or for land statutorily required to be provided in exchange for land taken.

35. *Clause 7(5)* allows the Secretary of State to acquire an easement or other new right over the land in question, as opposed to acquiring the land itself.

36. *Clause 7(6)* provides that any acquisition under the clause would be subject to normal compulsory purchase procedures under the Acquisition of Land Act 1981.

37. *Clause 7(7)* provides that the same modifications of the compulsory purchase legislation apply in relation to the acquisition of easements under subsection (5) as apply in relation to the acquisition of easements under clause 6(1).

#### **Clause 8: Extinguishment of private rights of way**

38. *Clause 8(1)* and (2) provide for any private rights of way over land within the Bill limits held by the Secretary of State for the purposes of the Crossrail works to be extinguished.

39. *Clause 8(3)* sets out certain rights of way that are not to be extinguished.

40. *Clause 8(4)* enables the Secretary of State to direct that any other particular right of way is to be excepted from extinguishment under the clause.

41. *Clause 8(5)* and (6) provide for the private rights of way to be extinguished at the time of acquisition, in respect of some land, and at the time of entry onto the land, in the case of other land.

42. *Clause 8(7)* and (8) provide that compensation may be payable to anyone who suffers loss as a result of any such extinguishment, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

#### **Clause 9: Extinguishment of rights of statutory undertakers etc.**

43. *Clause 9(1)* provides for the rights of statutory undertakers over land held by the Secretary of State for the purposes of the Crossrail works to be extinguished as if it had been acquired under Part 9 of the Town and Country Planning Act 1990.

44. *Clause 9(2)* to (5) amend the application of the Town and Country Planning Act 1990. This is primarily necessary because the compulsory purchase powers in the Bill are vested in the Secretary of State, not the nominated undertaker, and so the nominated undertaker will not have been the acquiring authority.

## **Planning**

### **Clause 10: Planning: general**

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

46. *Clause 10(2), (3), (4) and (8)* provides that the deemed planning permission only applies to development comprising a specified work listed in Schedule 1 to the Bill (a “scheduled work”) or, in the case of other ancillary development not comprising a scheduled work which is likely to have a significant effect on the environment or otherwise requires environmental assessment, if the ancillary development has been environmentally assessed in the environmental statements deposited with or produced during the passage of the Bill.

47. *Clause 10(5)* provides that where an application for planning permission is made to the local planning authority in respect of development excluded from the deemed planning permission conferred by clause 10(1) by virtue of subsection (2), (3), (4) and (8), the requirements for environmental assessment are to apply to the application even if the area of the development does not exceed the thresholds provided for in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

48. *Clause 10(6)* brings into effect Schedule 7. Schedule 7 establishes a planning regime that seeks to give local planning authorities an appropriate degree of control over the detailed planning aspects of Crossrail (and will be augmented by other arrangements outside the Bill, such as a Planning Memorandum and a Construction Code of Practice, designed to sit alongside the legislative provisions). These provisions, and the accompanying documents, are based on the framework established for the Channel Tunnel Rail Link.

### **Clause 11: Permitted development: time limit**

49. *Clause 11(1)* provides that, for scheduled works, the deemed planning permission granted by clause 11 applies only to works begun within ten years of Royal Assent.

50. *Clause 11(2)* allows the Secretary of State to extend this time limit by means of an order.

51. *Clause 11(3)* provides for such an order to be subject to the negative resolution procedure.

52. *Clause 11(4)* disapplies section 91 of the Town and Country Planning Act 1990, which sets out the duration of normal planning permission, in respect of the planning permission granted by subsection (1).

### **Clause 12: Fees for planning applications**

53. *Clause 12(1)* allows the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly, to issue regulations about the fees to be

charged by local planning authorities for the requests for approval of details under Schedule 7 of the Bill to be submitted for Crossrail.

54. *Clause 12(2) and (3)* set out what those regulations may cover.

55. *Clause 12(4)* provides for the regulations to be issued in the form of a statutory instrument subject to negative resolution procedure.

56. *Clause 12(5)* disapplies any regulations issued under section 303 of the Town and Country Planning Act 1990, which set out the fees normally charged for planning applications, in respect of any planning application submitted pursuant to clause 10(1). This is necessary because the regulations issued under subsection (1) will cover requests for approval of details under Schedule 7 of the Bill.

### **Clause 13: Power to disapply section 10(1)**

57. *Clause 13(1)* allows the Secretary of State, by means of an order, to disapply the deemed planning permission granted by clause 10(1) in respect of development consisting of operations for the maintenance or alteration of the Crossrail works, from the date specified in the order. In essence, this provision allows the Secretary of State to switch off the deemed planning permission granted by the Bill in respect of future Crossrail works, should he decide to do so (this is most likely to be used in the case of the electrification and signalling work done on sections of the existing railway network, and would ensure that a single planning regime covered works in relation to existing track after the Crossrail construction phase has been completed).

58. *Clause 13(2)* provides that, in the event of such a disapplication, any such development would be subject to the normal provisions of the Town and Country Planning (General Permitted Development) Order 1995 applying to development authorised by a local Act.

59. *Clause 13(3), (4) and (5)* provide for the order to make different provisions in different cases, and for it to be issued by means of a statutory instrument.

### **Clause 14: EIA regulations: replacement development**

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

### **Clause 15: Extension of permitted development rights**

61. *Clause 15* allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights for work which they carry out

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in relation to Crossrail, provided that the significant impacts of such diversions have been environmentally assessed for the purposes of the project as a whole. Such assessment would be found within the various statements containing environmental information which the Department has produced at the introduction of the Bill and subsequently where significant project changes have emerged. As with clause 14, this provision is intended to ensure that the direct and indirect environmental effects of the development authorised by the Bill are properly assessed at the appropriate stage.

62. Clause 15 also brings into effect Schedule 8, which enables the Secretary of State to intervene in the process of statutory undertakers carrying out work in relation to Crossrail but under their own permitted development rights. The Secretary of State may intervene under Schedule 8 for the purposes of avoiding a breach of a relevant Parliamentary undertaking or for securing that the environmental effects of carrying out development are not materially different from those assessed.

## **Heritage**

### **Clause 16: Disapplication and modification of controls**

63. *Clause 16* brings into effect Schedule 9, which contains provisions dealing with the heritage aspects of Crossrail.

### **Clause 17: Rights of entry**

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

## **Trees**

### **Clause 18: Power to deal with trees on neighbouring land**

65. *Clause 18(1)* allows the nominated undertaker, by notice, to require the occupier of land on which a tree is situated which overhangs the Crossrail works to remove, top or lop that tree where it is necessary to allow the Crossrail works to be maintained, or for the safe operation of Crossrail.

66. *Clause 18(2)* and *(3)* allow the occupier of the land to serve a counter-notice objecting within 28 days, in which case the matter is referred to the County Court to determine whether the notice should be confirmed.

67. *Clause 18(4)*, *(5)* and *(6)* allow the nominated undertaker, in default of a notice being complied with, to do himself the things required to be done by the notice, subject to doing any topping or lopping work in a husband-like manner and in such a way as to cause the minimum of damage to the tree.

68. *Clause 18(7)* allows the occupier of the land on which the tree concerned is growing to apply to the County Court for compensation for loss or damage suffered, or for any expenses in complying with the notice.

### **Clause 19: Disapplication of controls**

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

### **Noise**

#### **Clause 20: Control of construction sites: appeals**

70. *Clause 20(1), (2) and (3)* modify the operation of sections 60 and 61 of the Control of Pollution Act 1974, so that appeals under those provisions are determined by the Secretary of State or if the parties agree by arbitration, rather than by a magistrates' court.

71. *Clause 20(4)* enables the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly, to make regulations about procedure in relation to such arbitrations. Such regulations would be made by statutory instrument.

#### **Clause 21: Proceedings in respect of statutory nuisance: defence**

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

### **Railway matters**

#### **Clause 22: Licensing**

73. *Clause 22* temporarily disapplies the requirement for either a licence, or a licence exemption, under the Railways Act 1993 which would otherwise exist in respect of any network constructed using Bill powers, and in respect of any train being used on such a network. This disapplication lasts until the Secretary of State gives notice of his determination that the network is ready for commercial use. Before newly constructed track is open for commercial use, it is possible that use will be made of it for construction purposes or for testing, and this clause removes the need for a licence in respect of such operations.

#### **Clause 23: Overriding duty of Office of Rail Regulation before Crossrail operational**

74. *Clause 23(1)* provides that in the period between Royal Assent and the start of Crossrail passenger services, the Office of Rail Regulation ("ORR") shall exercise its

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functions, so far as they relate to access contracts, in a manner so as to facilitate the operation of the principal Crossrail passenger service on and after a date specified by the Secretary of State. This clause ensures that, in regulating access contracts entered into after Royal Assent, the ORR will take into account prospective principal Crossrail passenger services.

75. *Clause 23(2)* identifies those functions exercised by the ORR which will be subject to the overriding duty. They are functions relating to the control of terms in access contracts. Access contracts are agreements in which permission is given by the owner of a railway facility for a person to make use of that facility.

76. *Clause 23(3)* ensures that the overriding duty does not affect, and hence bias, certain economic aspects of the ORR's functions.

77. *Clause 23(4)* makes the overriding duty in the above subsection subject to the ORR's general duty as regards railway safety under the Railways Act 2005.

78. *Clause 23(5)* allows the ORR, with the consent of the Secretary of State, to contravene the duty set out in subsection (1).

79. *Clause 23(6)* provides that the interim period in subsection (1) is between Royal Assent and the first use of the principal Crossrail tunnel by any passenger service.

80. *Clause 23(7)* and (8) provide that the Secretary of State may extend the interim period. If he does so he must specify the new end date, inform the ORR and publish the direction. He can make different provision for different purposes and the direction may be varied or revoked.

#### **Clause 24: Directions specifying matters for purposes of section 23**

81. *Clause 24(1)* enables the Secretary of State to specify the minimum operating levels which the principal Crossrail passenger services will deliver. This has the effect of determining the extent of the ORR's duty under clause 23(1).

82. *Clause 24(2)* enables the Secretary of State to specify the extent to which any Crossrail passenger service does not contribute to the specified minimum operating level. It allows the Secretary of State to distinguish between what he sees as the important services which the ORR must facilitate, and those services to which the ORR need not give special consideration.

83. *Clause 24(3)* enables the Secretary of State to specify a date. The ORR's overriding duty under clause 23 will be to facilitate the operation of principal Crossrail passenger services on and after such a specified date.

84. *Clause 24(4)* requires the Secretary of State to consult before giving directions. The statutory consultees may have views on the effects of, or necessity for, obliging the ORR to facilitate certain specified services.

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85. *Clause 24(5)* provides how minimum operating levels may be framed. Minimum operating levels may relate to any characteristic of a service, for example its punctuality or the waiting time in between train departures.

86. *Clause 24(6)* provides that directions can make different provision for different purposes and they may be varied or revoked. *Clause 24(7)* provides that the Secretary of State must publish such directions.

#### **Clause 25: Other duties of Office of Rail Regulation as to exercise of functions**

87. *Clause 25* provides that the ORR's general duties contained in section 4 of the Railways Act 1993 apply to functions arising under the Bill but with an overriding duty to exercise its functions in a way that does not impede the performance of any development agreement for Crossrail. This duty is, however, subservient to the ORR's general duty as regards railway safety under the Railways Act 2005 and also the duty in clause 23 to facilitate the operation of the specified principal Crossrail passenger service. In relation to Competition Act functions, the ORR may have regard to matters relevant to that duty if the OFT could do so.

88. The ORR's Competition Act functions relate to agreements, business practices, or conduct which may have a damaging effect on competition in the United Kingdom. In respect of agreements or conduct relating to the supply of services relating to railways, the ORR exercises powers concurrently with the Office of Fair Trading ("OFT").

89. *Clause 25(3)* and *(4)* prevent the overriding duty under subsection (1) from affecting the ORR's Competition Act functions but does not prevent (when it is exercising those functions) the ORR from considering matters relating to development agreements to the same extent as the OFT might.

90. *Clause 25(5)* provides that in exercising functions under the Bill the ORR shall have regard to the general duties it has in respect of its standard functions (such duties including protecting the interests of rail users and promoting the use of the rail network).

91. *Clause 25(6)* defines what a development agreement is for the purposes of this clause.

#### **Clause 26: Amending pre-commencement access contracts: construction of Crossrail**

92. *Clause 26* operates in respect of access contracts entered into prior to the enactment of the Bill that may be affected by the construction of Crossrail.

93. *Clause 26(1)* and *(2)* allow the ORR to direct an amendment to such a contract if it considers the railway facility to which the access contract relates will or may be affected by the construction of Crossrail.

94. *Clause 26(3)* provides that the ORR must act, and may only act, under the clause so as to secure appropriate provision for the disruption caused by the construction of Crossrail.

95. *Clause 26(4)* enables the ORR to require the parties to an affected contract to submit their proposals as to what the directions under subsection 1 should require.

96. *Clause 26(5)* requires the ORR to consult the Secretary of State before issuing directions under subsection (1).

**Clause 27: Amending pre-commencement access contracts: principal Crossrail services**

97. *Clause 27* operates in respect of access contracts entered into prior to the enactment of the Bill that may affect the operation of principal Crossrail passenger services.

98. *Clause 27(2)* provides that once the Secretary of State has specified minimum operating levels under clause 24(1), the ORR must identify contracts that would conflict with the principal Crossrail passenger services from their specified start of operation.

99. *Clause 27(3)* requires the ORR to report any such perceived conflicts to the Secretary of State.

100. *Clause 27(4)* provides that the Secretary of State may then object, or make no objection, to the perceived conflict.

101. *Clause 27(5)* requires the ORR to direct the parties to amend the contract or to declare all or part of it void if the Secretary of State has made an objection.

102. *Clause 27(6)* provides that where the ORR has interfered with a contract under the previous subsection, then it may direct the payment of consequential compensation.

103. *Clause 27(7), (8) and (9)* enable the Secretary of State to make regulations, by means of a statutory instrument subject to annulment, in relation to the carrying out of the ORR's functions under subsections (5) and (6).

**Clause 28: Terms of, and amending other access contracts because of, Crossrail access contracts**

104. *Clause 28(1)* engages two procedures where a would-be Crossrail passenger service provider applies to the ORR for a direction under section 17 of the Railways Act 1993 in respect of a railway facility relating to the Crossrail network outside the principal Crossrail tunnel. The procedures engaged are in subsections (2) and (6). Under section 17 of the 1993 Act the ORR can direct a facility owner to enter into an access contract (for example, a contract to allow trains to operate on the facility owner's track) with an applicant.

105. *Clause 28(2)* allows the ORR, in respect of such an application, to direct the amendment of an existing access contract if that would facilitate the operation of principal Crossrail services (identified by reference to operating levels specified by the Secretary of State). Those agreements which the ORR may direct to be amended are, by virtue of *clause 28(3)*, any agreements relating to any railway other than that being constructed as part of the principal Crossrail tunnel.

106. *Clause 28(4)* provides that the ORR, when making directions under subsection (2), may not require the parties to an affected contract to change the amounts payable under that

contract, or the timing of those payments. Such forced changes would not be required in order to facilitate principal Crossrail passenger services.

107. *Clause 28(5)* provides that where the ORR issues a direction in respect of a contract under subsection (2), it shall consider whether it should review the amount payable and timing of those payments, in accordance with provisions of the Railways Act 1993.

108. *Clause 28(6)* is analogous to clause 31(5). It provides that the Secretary of State may give directions to the ORR to include in the proposed contract terms as to the duration of the contract, terms (except in respect of charges or financial matters) which the Secretary of State considers are needed for Crossrail passenger services, or terms in so far as they relate to the principal Crossrail tunnel.

109. *Clause 28(7)* allows (but does not require) the Secretary of State, when securing the inclusion of contractual terms under subsection (6), to require the inclusion of terms which have effect for specified, limited, purposes.

110. *Clause 28(8), (9), and (10)* allow the Secretary of State to make regulations modifying how Schedule 4 to the Railways Act 1993 applies in respect of the application for a direction under section 17. These provisions may apply where the procedures of either subsection (2) or (6) are engaged. Schedule 4 of the 1993 Act provides for how an application for an access contract is to be treated by the ORR and allows for the relevant facility owner, and persons who would be affected by the entry into of an access contract, to make representations to the ORR. The regulations would be made by means of a statutory instrument subject to annulment.

#### **Clause 29: Post-commencement access contracts: effects of construction of Crossrail**

111. *Clause 29(1) and (2)* affect the ORR's exercise of its powers under section 17 and 18 of the Railways Act 1993 (its powers to control the terms of access contracts), where new access contracts are entered into in respect of railway facilities which may be affected by disruption or alteration caused by the construction of Crossrail. The ORR must exercise its functions to secure appropriate provision in the relevant access contracts for dealing with the disruption and alteration. The ORR secures provisions in access contracts by either directing that they be included in an agreement, or refusing to approve an agreement which omits them.

112. *Clause 29(3)* provides that where the ORR decides to secure that an access contract contains such provision in respect of Crossrail disruption, the ORR must first invite and consider representations from the Secretary of State before approving or requiring the introduction of a provision which might lead to compensation for disruption being met by the nominated undertaker.

#### **Clause 30: Crossrail access contracts: disapplying requirements for approval**

113. *Clause 30* provides that section 18 of the Railways Act 1993 (which requires access contracts to have the approval of the ORR) and section 22(1) of the 1993 Act (which deals with the amendment of such contracts) shall not apply to specified Crossrail contracts. These contracts are those specified by order by the Secretary of State, and may only be access contracts under which permission is given to use a railway facility forming or associated with

the principal Crossrail tunnel. The Secretary of State must consult the ORR about the terms of any specific contract in respect of which he proposes to make an order. Such an order must be laid before Parliament but is not subject to annulment.

### **Clause 31: Crossrail-related access contracts: modified requirements for approval**

114. *Clause 31(1), (2) and (3)* require the ORR to notify the Secretary of State of any proposed contract sent to it for approval that permits a passenger service to use part of the Crossrail network outside the principal tunnel. Access contracts for the rail network are generally subject to the approval of the ORR before they are concluded.

115. *Clause 31(4) and (5)* provide that the Secretary of State may then give directions to the ORR to approve terms as to the duration of the contract, terms (except in respect of charges or financial matters) which the Secretary of State considers are needed for Crossrail passenger services, or terms in so far as they relate to the principal Crossrail tunnel.

116. *Clause 31(7)* provides that the ORR may approve the contract without modification but otherwise must wait until the Secretary of State has issued directions or given notice that he is not doing so.

### **Clause 32: Power of Secretary of State to require entry into access contract**

117. *Clause 32(1)* allows the Secretary of State to direct the owner of a railway facility to enter into an access contract with him, or with any other person of the Secretary of State's choosing, to permit the use of that facility for or in connection with Crossrail passenger services (passenger services that for at least part of their journey make use of all or part of the principal Crossrail tunnel).

118. *Clause 32(2)* applies the interpretative provisions of subsections (6) to (9) of section 17 of the Railways Act 1993, with modifications, to the interpretation of subsection (1). The modifications cater for the fact that the beneficiary of an access contract granted under subsection (1) may not be akin to an applicant for such a contract.

119. Where the relevant provisions of the Railways Act 1993 would require the ORR's pre-approval of an access contract obtained under subsection (1), *clause 32(3)* provides that the modified pre-approval mechanisms contained in subsection (4) shall apply.

120. *Clause 32(4)* provides that, in acting under section 18 of the Railways Act 1993 in respect of such a contract, the ORR must approve those terms of the proposed contract which give effect to: directions that relate to the duration of the permission granted; directions about terms (other than in respect of charges or financial matters) that the Secretary of State considers are needed for Crossrail passenger services; or directions that relate to the principal Crossrail tunnel.

121. *Clause 32(5)* provides that in applying the provisions in section 18 of the Railways Act 1993 which deal with the need for prior approval of access contracts by the ORR, the person with whom the facility owner is required to enter into an access contract is considered as an applicant for certain purposes. It also provides that in respect of the stretch of railway leading from Heathrow to Network Rail's network, section 18 of the Railways Act 1993

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(under which access contracts may require approval by the ORR) applies notwithstanding what would otherwise be an exemption under secondary legislation which exists in respect of that track.

### **Clause 33: Amending existing access contracts: effects of contracts under section 32**

122. *Clause 33(1), (2) and (3)* provides that, following a contract being entered into under clause 32, the ORR may direct parties to access contracts relating to the Crossrail network outside the principal tunnel to make amendments necessary to facilitate the principal Crossrail passenger services.

123. *Clause 33(4) and (5)* provide that the ORR cannot amend access charges other than by undertaking an access charges review. An access charges review is an established process under Schedule 4 of the Railways Act 1993 by which the ORR reviews the amounts payable under an access contract and the time and manner in which such payments are made.

124. *Clause 33(6), (7) and (8)* enable the Secretary of State to make regulations in relation to the carrying out by the ORR of its functions under subsection 2. Such regulations would be subject to annulment by a resolution of either House of Parliament.

### **Clause 34: Effect on franchise agreements of directions given under section 28 or 33**

125. *Clause 34(1)* applies where a direction is given under clause 28(2) or 33(2) and the amendments made as a result affect the carrying out of a franchise agreement other than one to which Scottish Ministers are party.

126. *Clause 34(2) and (3)* provide that if the parties to the franchise agreement cannot (despite being obliged to use all reasonable endeavours) agree on how to vary the franchise agreement, then the Secretary of State may terminate it.

127. *Clause 34(4), (5) and (6)* allow the ORR to direct the person whose application for an access contract ultimately caused the variation to a franchise agreement to pay compensation to the franchisee whose franchise has been terminated. The amount of that compensation is to be determined by the ORR.

### **Clause 35: Award of Crossrail franchises to public-sector operators**

128. *Clause 35* disapplies the prohibition in section 25 of the Railways Act 1993 on public sector operators being a franchisee in respect of passenger railway services. It therefore allows a public sector operator to be a franchisee under a franchise agreement for Crossrail services.

### **Clause 36: Disapplication of franchising and access exemptions**

129. *Clause 36(1) and (2)* allow the Secretary of State, by means of an order, to restrict or amend certain exemptions granted under the Railways (London Regional Transport) (Exemptions) Order 1994 (“the LRT Order”) or the Railways (Heathrow Express) (Exemptions) Order 1994 (“the Heathrow Express Order”). The Secretary of State also has the power to impose, or make more onerous, conditions attaching to the relevant exemptions.

The relevant exemptions which may be removed are those which disapply the ORR's role of approving or directing the entry into access contracts for railway facilities ("access exemptions"), and - in respect of the railway leading to Heathrow Airport - the exemption preventing services on that track from being franchised.

130. *Clause 36(3)* applies to track, stations and facilities where the relevant access exemption contained in the Heathrow Express Order is ended under subsection (1). In such circumstances the Secretary of State may, by means of an order, make provision for treating as void any access contract permitting use of that facility. Exceptions to this provision can also be made in the order, thus enabling a particular contract to continue in existence when others are terminated.

131. *Clause 36(4)* provides that the power granted under subsection (1), in respect of the LRT Order, shall only be exercisable for the purpose of facilitating Crossrail services through the principal Crossrail tunnel.

132. *Clause 36(5)* provides that the powers granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to access exemptions and access contracts shall only be exercisable for the purposes of facilitating Crossrail passenger services.

133. *Clause 36(6)* provides that the power granted under subsections (1) and (3)(a) in respect of the Heathrow Express Order and relating to the exemption from the franchising regime shall only be exercisable for the purpose of facilitating Crossrail passenger services or enabling the franchising of services to Heathrow.

134. *Clause 36(7)* provides that an order under this clause shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

### **Clause 37: Closures**

135. *Clause 37* disapplies the closure provisions of the Railways Act 2005 where any such closure is required in connection with construction or maintenance of the Crossrail works, or as a consequence of Crossrail passenger services. The disapplication does not apply to Crossrail services or facilities themselves. The facilities most likely to be affected by closures as a result of the construction of the Crossrail works are mostly on the North London Line between Stratford and North Woolwich, where the existing services would be replaced by a combination of Crossrail and Docklands Light Railway services.

### **Clause 38: Key system assets**

136. Section 216(1)(b) of the Greater London Authority Act 1999 ("the 1999 Act") requires the consent of Transport for London before the creation of any interest in, or rights over, any assets designated as "key system assets". Such key system assets are designated as such either in, or in respect of, London Underground Limited's Public Private Partnership agreements. *Clause 38(1)* and *(2)* disapply section 216(1)(b) of the 1999 Act – and hence disapply the requirement for Transport for London's consent – where the creation of such interests or rights would facilitate the construction or operation of Crossrail. The construction and operation of Crossrail may interact with, or have an effect on, the London Underground.

**Clause 39: Power to designate persons as “protected railway companies”**

137. *Clause 39(1)* and (2) allow the Secretary of State, with the consent of the private sector company concerned, by order to provide that such company be treated as a protected railway company for the purposes of the Railways Act 1993. Such a company must be the manager of a railway facility that is contained in or associated with the principal Crossrail tunnel.

138. The effect of a company being treated as a protected railway company is to engage sections 59 to 65 of the Railways Act 1993 in respect of that company. These provisions enable the Secretary of State to apply to a Court for a “railway administration order” in respect of an insolvent protected railway company, or to intervene (and apply for such an order) during the voluntary winding up or insolvency proceedings of such a company. The purposes of railway administration orders are to secure the transfer to another company of an undertaking so that relevant railway operations may be continued, and to secure the continuation of such railway operations pending a transfer.

139. *Clause 39(3)* provides that an order under the above subsection shall be subject to annulment by a resolution of either House of Parliament.

**Clause 40: Duty to co-operate**

140. *Clause 40(1)* provides a mechanism for the nominated undertaker to require others to co-operate with him during the construction, maintenance and operation of Crossrail, by entering into an agreement to deal with a problem relating to a railway asset. This provision reflects the fact that Crossrail will interact with the existing railways, both overland and underground.

141. *Clause 40(2)* provides a reciprocal mechanism for the benefit of any controller of a railway asset (most likely an owner or operator of track) affected by the construction, maintenance or operation of Crossrail.

142. *Clause 40(3)* provides for the terms of any such agreements to be agreed between the parties, or else referred to arbitration (for which arbitration clause 41 makes provision).

**Clause 41: Arbitration after referral under section 40(3)**

143. *Clause 41* sets out a mechanism for the arbitration of any disputes under clause 40(3).

144. *Clause 41(3)* allows the Secretary of State, who is required to be notified that a dispute has been referred to arbitration, to direct the arbitrator as to the results that are to be achieved, so far as reasonably practicable, by the agreement to be determined under the arbitration. In doing so the Secretary of State is confining the arbitrator’s jurisdiction.

145. *Clause 41(6)* clarifies what the arbitrator must do: *clause 41(7)* clarifies how he must carry out his functions.

#### **Clause 42: Arbitration under section 40(3): multiple proceedings**

146. *Clause 42* sets out the arrangements to apply in the case of multiple arbitrations under clause 40, allowing those proceedings to be consolidated or held concurrently.

147. *Clause 42(2)* means that any group of hearings to be consolidated must consist of section 40(3) proceedings and arbitral proceedings relating to one or more such set of proceedings.

#### **Clause 43: Transfer of functions relating to works**

148. *Clause 43(1)* provides for the Secretary of State, if he acquires any land from a railway operator for the purposes of Crossrail and on that land there are works authorised by statute, to, by means of an order, transfer to him or to the nominated undertaker, any statutory power or duty relating to the works previously exercisable by the railway operator. This clause simply allows any statutory powers or duties to be transferred with the land acquired.

149. *Clause 43(2)* allows the Secretary of State, by means of an order, to provide for the further transfer to himself or to a nominated undertaker of any power or duty transferred under this clause.

150. *Clause 43(3)* allows the Secretary of State, if a railway operator acquires any land from the Secretary of State on which there are Crossrail works, to, with the consent of the railway operator concerned, by order transfer any duty under the Bill relating to the works.

#### **Clause 44: Application of section 122 of the Railways Act 1993**

151. *Clause 44* is designed to make the defence of statutory authority that is available under section 122 of the Railways Act 1993, and is relevant to actions for nuisance etc, available in circumstances where the licensing requirement under the 1993 Act does not apply because of clause 22. This is necessary because section 122 only applies where the operator of the relevant railway asset has a licence, or the benefit of a licence exemption, under the 1993 Act.

#### **Clause 45: Application of other railway legislation**

152. *Clause 45* brings into effect Schedule 11, which contains provisions dealing with the application of railway legislation to Crossrail.

#### **Miscellaneous and general**

#### **Clause 46: Transfer schemes**

153. *Clause 46* brings into effect Schedule 12, which sets out the power of the Secretary of State to make schemes to transfer property, rights and liabilities.

**Clause 47: Holder of functions of nominated undertaker**

154. *Clause 47(1)* provides for the Secretary of State to nominate, by means of an order, one or more nominated undertakers for the purposes of the Bill.

155. *Clause 47(2)* provides that, in the absence of a named nominated undertaker for any provision of the Bill, the Secretary of State is deemed to be the nominated undertaker for the purposes of that provision. This is to cover the situations that would arise should no nominated undertaker be appointed or where there is a delay between a nomination ceasing to have effect (for example because an agreement is terminated) and the Secretary of State's making another nomination in favour of some other person.

156. *Clause 47(3)* allows the Secretary of State, by agreement with the Mayor of London or whoever is proposed to be named in a nomination order, to fetter his discretion as to the exercise of the power granted by subsection (1). This power is necessary to enable the Secretary of State to make contractual arrangements prior to the nomination of a person or body as the nominated undertaker.

157. *Clause 47(4) and (5)* require the Secretary of State to consult the Mayor of London before making certain nomination orders or entering into an agreement with anyone, other than the Mayor, under which the Secretary of State fetters his nomination power.

158. *Clause 47(6)* allows the Secretary of State, by means of an order, to make any modifications to the provisions of the Act resulting from the Bill that relate to the Secretary of State, where he has himself the functions of nominated undertaker.

159. *Clause 47(7), (8) and (9)* provide that orders made under this clause are to be made by statutory instrument and enable the Secretary of State to include in such orders supplementary, incidental, consequential and transitional provisions. Orders made under subsection (6) are subject to the negative procedure.

**Clause 48: Disapplication and modification of miscellaneous controls**

160. *Clause 48* brings into effect Schedule 13, which contains provisions dealing with the disapplication and modification of miscellaneous controls in relation to Crossrail.

**Clause 49: Burial grounds**

161. *Clause 49(1)* disapplies existing ecclesiastical and other law in relation to any disturbance of human remains that may be required as a result of the Crossrail works. This provision is included in case the Crossrail works require that any human remains be disturbed (some suggest that some London squares to be used for Crossrail were used as burial grounds during the period of the Black Death).

162. *Clause 49(2)* provides that the disapplication in subsection (1) only applies in respect of human remains removed, reinterred or cremated in accordance with the provisions of Schedule 13, and if any monument (such as a headstone) of the deceased in question has also been dealt with in accordance with Schedule 14. Schedule 14 therefore sets out the regime

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that applies in order to ensure that any such remains and monuments are dealt with in an appropriate manner.

163. *Clause 49(3)* provides that subsection (2) shall not apply where the use of land required by Crossrail does not involve disturbing the human remains interred in it.

#### **Clause 50: Application of landlord and tenant law**

164. *Clause 50* disapplies the provisions of landlord and tenant law in relation to any leases granted by the Secretary of State pursuant to any agreement to take forward the development of Crossrail. This provision will permit the recovery of leased land where a development agreement is terminated and thus ensures that such land is not lost to the Crossrail project in such a case.

#### **Clause 51: Disposal of Crown land**

165. *Clause 51* provides for additional flexibility as to the terms of agreements about land acquisition and use to be entered into with each of the Royal Parks Agency and the Crown Estate Commissioners. Each body has responsibilities for the management of land vesting in the Crown, and the functions of each are governed by statute.

166. *Clause 51(1)* and (2) would allow the Secretary of State (the legal personality of the Royal Parks Agency) to grant leases and rights of way over the Royal Parks without statutory constraint as to their duration or financial terms.

167. *Clause 51(3)* similarly gives greater flexibility to the Crown Estate Commissioners in their dealings with land by disapplying relevant statutory constraints.

#### **Clause 52: Prohibition or restrictions on land use imposed for Crossrail purposes**

168. *Clause 52* enables covenants between the Secretary of State and persons with an interest in land to bind successors in title to such interests even though they are not direct parties to the original covenant. In order for covenants concerning land to be enforceable against successors in title to such land, the person claiming the benefit should usually have a neighbouring interest in land. The Secretary of State will not have such an interest until the compulsory purchase powers of the Bill are exercised, and so in order to allow such covenants to be entered into before then, this clause dispenses with the requirement of a neighbouring interest in land.

169. *Clause 52(3)* has the effect of enabling such covenants to be categorised as local land charges. If registered as such, a future acquirer should become aware of the prohibitions or restrictions concerned.

#### **Clause 53: Compensation for injurious affection**

170. *Clause 53* provides that section 10(1) of the Compulsory Purchase Act 1965, which deals with compensation for injurious affection, shall have effect, in respect of land injuriously affected by the Crossrail works, with the substitution of “nominated undertaker” for “acquiring authority”. This amendment is necessary because the compulsory purchase

powers in the Bill are vested in the Secretary of State, not the nominated undertaker, and so the nominated undertaker, who will be responsible for any injurious affection compensation, will not have been the acquiring authority.

#### **Clause 54: Compensation for water abstraction**

171. *Clause 54(1)* disapplies provisions of the Water Resources Act 1991 which otherwise would impose an absolute prohibition on abstracting water if this causes loss or damage to another person. Such a restriction could prevent or delay Crossrail works being constructed.

172. *Clause 54(2)* provides that where water abstraction has caused loss or damage, the person suffering loss or damage must be compensated. The overall effect of clause 54 is that the duty to avoid damage by water abstraction creates the possibility of compensation for damage but not the possibility of a court injunction. The practical protection for property owners arises from the requirement that the Environment Agency pre-approve abstraction, for which see Part 3 of Schedule 16.

#### **Clause 55: Temporary possession agreements**

173. *Clause 55* makes special provision in respect of certain agreements reached between the Secretary of State and landowners which are intended to reduce the power to acquire land outright to a power only to take temporary possession, or make temporary use, of land. *Clause 55(1)* achieves this by providing, where it is agreed, that land shall be treated as if it were subject to the temporary (as opposed to permanent) acquisition regime set out in Schedule 5.

174. *Clause 55(3) to (9)* make related provision, including allowing the effect of the temporary possessions regime to be modified by agreement between the landowner and the Secretary of State.

175. *Clause 55(10)* provides that any such agreement shall be a local land charge, meaning that it should come to the attention of any intending purchaser of the land concerned.

#### **Clause 56: Application of Act to extensions**

176. *Clause 56* permits any Transport and Works Act (“TWA”) 1992 order which relates to a proposed extension of Crossrail, or to the provision of a facility connected with Crossrail, to apply any provision of the Bill, with any modifications necessary, to the order, or provide for any provision of the Bill to have effect as if the extension were part of Crossrail. Certain provisions of the Bill – those dealing with the extension of compulsory purchase powers and listed buildings, buildings in conservation areas and ancient monuments – are to be excluded from application in this way. The clause allows any such TWA order to make the provision needed to ensure that any extension is subject to the same regime as the Crossrail scheme covered by the Bill.

#### **Clause 57: Reinstatement of discontinued facilities**

177. *Clause 57* brings into effect Schedule 15, which contains provision concerning the reinstatement of facilities which have been discontinued as a consequence of Crossrail construction, and for planning conditions to be imposed in relation to such development.

### **Clause 58: Protection of interests**

178. *Clause 58* brings into effect Schedule 16, which contains provisions setting out the protections to be provided for various bodies affected by the works.

### **Clause 59: Power to devolve functions of Secretary of State**

179. *Clause 59(1)* allows the Secretary of State, by means of an order, to devolve certain provisions of the Bill to the Greater London Authority, Transport for London or to the Greater London Authority and Transport for London. This power is necessary to allow the flexibility for the Crossrail project to be taken forward by these bodies, should the Secretary of State consider this to be appropriate.

180. *Clause 59(2)* allows the Secretary of State to fetter his discretion under subsection (1) by agreement with the Mayor of London or Transport for London.

181. *Clause 59(3) to (6)* set out the arrangements to apply to an order under this clause. Such an order is to be made by statutory instrument and laid before Parliament.

182. *Clause 59(7)* sets out provisions of the Bill which are to be capable of being devolved under this clause. These include land acquisition powers and the power to make orders in relation to nominated undertakers.

### **Clause 60: Correction of deposited plans**

183. *Clause 60* sets out a mechanism whereby any inaccuracy in the deposited plans or in the “book of reference” (the list of all the properties affected by the Bill that was deposited with the Crossrail Bill when first introduced and which was updated during the passage of the Crossrail Bill in previous Parliamentary sessions) that accompanies the Bill may be corrected. These provisions are normal in Hybrid Bills and local Acts.

### **Clause 61: Service of documents**

184. *Clause 61* sets out how a document may be served on any person, where that is required or authorised under the Bill.

### **Clause 62: Arbitration**

185. *Clause 62* sets out how disputes under the Bill will be dealt with unless otherwise provided for. Disputes will be settled by a single arbitrator agreed by both parties. If no agreement can be reached on the identity of that single arbitrator, either party may, having informed the other, ask the President of the Institution of Civil Engineers to appoint an arbitrator.

186. If the President of the Institution of Civil Engineers notifies the parties that he is not going to appoint an arbitrator, and the parties are unable to agree on who should act as arbitrator, either party may, having informed the other, ask the ORR to appoint an arbitrator. That arbitrator may be someone from the ORR.

187. The clause also allows the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly, to issue procedural rules governing arbitration.

**Clause 63: “Deposited plans”, “deposited sections”**

188. *Clause 63* defines and identifies those plans and sections, as updated during earlier consideration of the Crossrail Bill, which establish the location and nature of Crossrail works.

**COMMENTARY ON SCHEDULES**

**Schedule 1 – Scheduled works**

189. *Schedule 1* sets out the Crossrail scheduled works, which are the main works authorised by the Bill. Each of these works has a centre line shown for it on the deposited plans, with a limit of lateral deviation, and a level shown on the deposited sections.

**Schedule 2 – Works: further and supplementary provisions**

190. *Paragraph 1* grants the nominated undertaker general powers to carry out ancillary works additional to the scheduled works.

191. *Paragraph 2* allows the nominated undertaker to provide highway accesses, whether permanent or temporary, at the points marked on the deposited plans (save where the highway authority objects on the specific grounds provided). Such access may be similarly provided with the consent of the highway authority, such consent not to be unreasonably withheld, at any other point within the Bill limits. Any disputes over the provision of highway accesses are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.

192. *Paragraph 3* grants the nominated undertaker the power to divert the particular overhead electric lines listed, as these will need to be moved in connection with the carrying out of the Crossrail works. This is in addition to the general power conferred by paragraph 1(1)(f) of the Schedule.

193. *Paragraph 4* grants the nominated undertaker the power to carry out and maintain landscaping or other mitigation works necessary as a result of the Crossrail works.

194. *Paragraphs 5 to 7* allow the nominated undertaker to safeguard, by means of supporting or strengthening, buildings and other structures.

195. *Paragraph 8* allows the nominated undertaker to make use of sewers and watercourses for removing water in connection with the construction or maintenance of Crossrail. Any disputes over making use of sewers and watercourses are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.

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196. *Paragraph 9* allows the nominated undertaker to carry out surveys and investigative works, and to protect or remove flora and fauna, in connection with the construction of Crossrail. Any disputes over entry to carry out surveys and investigative works are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.

197. *Paragraph 10* provides for the temporary obstruction of rights of navigation over certain waterways occasioned by the Crossrail works. The nominated undertaker is also given the power to interfere with the waterways concerned (including its banks, bed and foreshore) at any point within the Bill limits, including the power to carry out temporary works and dredging works, temporarily to moor or anchor barges or other vessels and temporarily to close the relevant waterway or a part of its navigation.

### **Schedule 3 – Highways**

198. *Paragraph 1* grants the nominated undertaker the power to stop up permanently certain specified highways. Some of the highways may be stopped up without providing a substitute, and some may be stopped up upon the provision of a substitute.

199. *Paragraph 2* grants the nominated undertaker the power to stop up any other bridleway or footpath situated within the Bill limits, subject to confirmation by the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly.

200. *Paragraph 3* provides that for any highway, bridleway or footpath stopped up under paragraphs 1 and 2, all rights of way over or along it shall be extinguished. Compensation may be payable to anyone who suffers loss as a result of the extinguishment of a private right of way.

201. *Paragraph 4* provides that the power to carry out associated works conferred by paragraphs 1 and 4 of Schedule 2 may be exercised in a way that permanently obstructs the highway, but only with the consent of the local highway authority. Such consent is not to be unreasonably withheld, and a request for consent is deemed to have been given if it has not been given or refused within 28 days. Any disputes over the granting of consent are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.

202. *Paragraph 5* allows the nominated undertaker, for the purposes of constructing or maintaining Crossrail, temporarily to stop up, alter or divert any highway, to break up and interfere with the highway and to divert traffic from it. In respect of the highways listed in the paragraph, there is a requirement to consult the local highway authority with a view to ensuring public safety and, so far as reasonably practicable, to reduce public inconvenience. For highways not listed, there is a requirement to obtain the consent of the local highway authority, such consent not to be unreasonably withheld, but consent may be given subject to reasonable conditions in the interest of public safety or convenience. A request for consent is deemed to have been given if it has not been given or refused within 28 days, or within 42 days in respect of certain important roads. Any disputes over the granting of consent are to be determined by the Secretary of State unless the parties agree that the matter should be referred to arbitration.

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203. *Paragraph 6* authorises the nominated undertaker to use any highway which is temporarily stopped up as a working site, provided that the part of the highway concerned is situated within the Bill limits.

204. *Paragraph 7* allows the nominated undertaker to place, maintain, reposition and remove apparatus from any highway within the Bill limits.

205. *Paragraph 8* deems certain highway works carried out under the Bill to be major transport works for the purposes of the New Roads and Street Works Act 1991. The effect of this is to apply, to highway works carried out by the nominated undertaker under the Bill, the same procedures and code for settling how changes to apparatus in a street are dealt with (and costs apportioned) where changes to the apparatus are necessitated by the highway works as applies to highway works carried out by the highway authority.

206. *Paragraph 9* requires any new or altered highway to be completed to the reasonable satisfaction of the highway authority, and for that to be certified by the highway authority, and *paragraph 10* requires any realigned or new highway to be constructed in accordance with specifications approved by the highway authority.

207. *Paragraph 11* provides for a 12 month period after practical completion of any new or altered highway and it being open for public use during which the nominated undertaker is responsible for maintenance (following which the highway authority is responsible for maintenance), and for the issue of certificates. Disputes under those paragraphs are determined by the Secretary of State unless the parties agree to arbitration.

208. *Paragraph 12* provides that nothing in section 46 of the Railways Clauses Consolidation Act 1845 shall require the nominated undertaker to maintain the surface of a highway under or over which the schedule works are constructed, or the immediate approach to any such highway. That responsibility will continue to rest with the highway authority.

209. *Paragraph 13* applies sections 116 to 117 of the Transport Act 1968, which sets out duties in respect of bridges carrying highways over railways.

210. *Paragraph 14* allows the nominated undertaker to enter into agreements concerning the construction of a new highway, the alteration of an existing highway and related matters with those having the charge, management or control of that highway. This allows the nominated undertaker to enter into agreement with, for example, local highway authorities, so that they may, for example, carry out some of the works themselves.

211. *Paragraph 15* allows the nominated undertaker to enter upon, take and use for Crossrail the subsoil of any highway where the subsoil concerned is subject to compulsory purchase under the Bill, without being required to acquire that subsoil or any right in it, except in respect of the areas listed in the table in the paragraph.

#### **Schedule 4 – Overhead lines: consent**

212. *Schedule 4* sets out the alternative consents regime that will apply to the installation of overhead electric lines within the Bill limits, given the disapplication of section 37 of the Electricity Act 1989 in clause 4.

213. *Paragraph 2* requires any installation to be made in accordance with the consent granted by the appropriate Ministers (defined in paragraph 12 for these purposes as the Secretary of State for Transport and the Secretary of State for Business, Enterprise and Regulatory Reform, acting jointly).

214. *Paragraph 3* sets out what an application for consent should contain.

215. *Paragraph 4* allows the appropriate Ministers to request in writing that the application be supplemented by specified additional information.

216. *Paragraph 5* sets out the publicity requirements that must be complied with in respect of certain applications.

217. *Paragraph 6* allows the appropriate Ministers, within 14 days of receiving an application for consent, to invite the local planning authority to comment on the application. The local planning authority have 28 days to comment on the application.

218. *Paragraph 7* requires the appropriate Ministers, within 14 days of receiving an application for consent, if they consider that the application relates to certain matters, to invite certain other bodies to comment on the application. Those bodies – Natural England and the Historic Buildings and Monuments Commission for England (more commonly known as English Heritage) – will have 14 days to comment on the application.

219. *Paragraph 8* sets out the grounds on which an application for consent by the nominated undertaker may be refused.

220. *Paragraph 9* allows the appropriate Ministers to make the grant of consent subject to any conditions they deem appropriate.

221. *Paragraph 10* allows the Secretary of State to vary or revoke the consent granted, after the period specified in the consent, which will not be less than ten years from the date of installation.

222. *Paragraph 11* provides that subject to paragraph 10, the consent granted will continue in force for the period specified in the consent.

#### **Schedule 5 – Temporary possession and use of land**

223. *Schedule 5* allows the nominated undertaker temporarily to take over possession of, and make use of, land in connection with carrying out the Crossrail works. The land in question is shown in the table in paragraph 1, together with the purposes for which the land may be used. This table therefore gives an indication of the purposes for which certain parcels of land may be temporarily used (for example, for mitigation works, utility diversions,

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means of access, the provision of working space, for highway access purposes, or for a worksite). The paragraph requires at least 28 days notice to be given to the owners and occupiers of the land before possession is taken, and the possession is time-limited to one year after completion of the works unless the owners agree otherwise. Compensation may be payable for such possession, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

224. *Paragraph 2* requires the nominated undertaker, before giving up possession of any land used under paragraph 1, to put the land in question back into such condition as may be agreed in a scheme between him, the owners of the land and the local planning authority, or determined by the appropriate Ministers (for these purposes defined as the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly). The paragraph also sets out what such a scheme may and may not require.

225. *Paragraph 3* allows the nominated undertaker to use any road situated on land specified in paragraph 8 of Schedule 6 for the passage of persons or vehicles. Compensation may be payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

226. *Paragraph 4* allows the nominated undertaker, during the maintenance period of any work (which is defined as being up to five years from the date on which the work is brought into general use), to enter upon and take possession of land within the Bill limits and within 20 metres of any scheduled work, if such possession is necessary for maintaining the work. The power granted by the paragraph does not apply to any house or garden, or land not subject to compulsory purchase under the Bill, and the nominated undertaker must give at least 28 days notice to the owners and occupiers of the land before possession is taken. The nominated undertaker may only remain in possession of such land as long as is reasonably necessary, and must, before giving up possession, restore the land in question to the reasonable satisfaction of the owners of the land. Compensation may be payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

227. *Paragraph 5* allows for private rights of way to be temporarily suspended and provides that compensation may be payable to anyone who suffers loss as a result of any such extinguishment, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

228. *Paragraph 6* sets out the arrangements for the enforcement of any possession required under the paragraph, should the owner or occupier of the land in question refuse to give up possession of it or hinder the taking of possession. It makes similar provision to that applying to the taking of possession following notice of entry on a compulsory purchase.

## **Schedule 6 – Acquisition of land shown within limits on deposited plans**

### **Part 1 – Purposes for which certain land may be acquired**

229. *Part 1* sets out in a table the purposes for which certain land may be acquired. The land identified in columns (1) and (2) may be acquired or used for the purpose set out in column (3). This table therefore gives an indication of the purposes for which certain parcels

of land may be acquired or used (for example, utility diversions, means of access, or for a worksite).

## **Part 2 – Application of legislation relating to compulsory purchase**

230. *Paragraphs 1, 2 and 3* provide that the Lands Clauses Consolidation Act 1845 will not apply to the compulsory acquisition of land under the Bill. Instead, Part 1 of the Compulsory Purchase Act 1965 is to apply, as it applies to a compulsory purchase order to which Schedule 1 to the Acquisition of Land Act 1981 applies, and as if the Bill when enacted were a compulsory purchase order under the 1981 Act. However, section 4 of the 1965 Act is not to apply and section 11 of and Schedule 3 to the 1965 Act are to have effect with the amendments mentioned in paragraph 3(3) and (4). These amendments extend the normal time period between notice to treat and entering and taking possession of land from 14 days to one month (in the case of subsoil, or where an easement or other right only is sought) and from 14 days to three months (in the case of all other land).

231. *Paragraphs 4 and 5* provide that the Compulsory Purchase (Vesting Declarations) Act 1981, an alternative means of obtaining land the subject of compulsory purchase, is to apply with modifications as if the Bill, when enacted, were a compulsory purchase order. Similar amendments to the application of the 1981 Act as can be found in paragraph 5 of Schedule 4 to the Channel Tunnel Rail Link Act 1996 are also made.

## **Part 3 – Supplementary provisions**

232. *Paragraphs 6 and 7* allow for the Secretary of State, instead of acquiring all of a person's interests in land outright, to have the power to acquire compulsorily easements and other rights for any purpose for which the land may be acquired, by creating new easements or rights. Where a new right is created, the Compulsory Purchase Act 1965 as applied by the Bill is to have effect subject to the modifications mentioned in paragraph 7.

233. *Paragraph 8* sets out land where, in order to reduce blight, rights of way only over land may be obtained. In such cases the Secretary of State is not to have power to acquire the land itself.

234. *Paragraph 9* sets out land where, because it is railway land comprised in the Heathrow Express Railway or needed for access to such land, rights only over land may be obtained. In this case, the rights that may be acquired are limited to rights of access to, or passage along, the existing railway.

235. *Paragraph 10* sets out land where the compulsory purchase power in clause 6 is limited to only so much of the land in question as is described in the table in the paragraph. These limitations are intended to reduce blight.

236. *Paragraph 11* gives the Secretary of State the power to acquire subsoil only, without being required to acquire any greater interest in any other part of the land. Certain of the land shown on the deposited plans is required for underground running tunnels and ancillary works which will be more than 9 metres deep. In these cases it is proposed that only the subsoil of

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the land may be taken (that is, where it is at a depth of more than 9 metres below the surface of the land). A table of this “subsoil only” land is included in the paragraph.

237. *Paragraph 12* sets out further land where the compulsory purchase power in clause 6 is limited to rights of way or subsoil more than 9 metres below the surface only.

238. *Paragraph 13* allows the Secretary of State, by order, to provide that new rights may be acquired by such persons as are specified in the order. Some of the land within the Bill limits, particularly that outside the limits of deviation but within the limits of land to be acquired or used, is intended to be used for the purposes of diverting statutory undertakers’ apparatus. For apparatus placed underground, it would be common for this to be done by the acquisition of easements by the utility concerned, rather than by acquiring the land outright. This paragraph permits this.

239. *Paragraphs 14, 15 and 16* provide, as is traditional in Bills providing for the acquisition of land, an alternative procedure to that set out in section 8(1) of the Compulsory Purchase Act 1965 relating to the acquisition of part only of certain properties. This alternative procedure would have to be invoked by appending the alternative provisions to the relevant notice to treat when it is served.

240. *Paragraph 17* applies the provisions about minerals applying to compulsory purchase orders in Schedule 2 to the Acquisition of Land Act 1981. .

241. *Paragraphs 18 and 19* set out the arrangements to apply if the Secretary of State extends the time limit for the exercise of compulsory purchase powers under clause 6(7).

242. *Paragraph 20* applies section 4 of the Acquisition of Land Act 1981, which deals with situations where unnecessary things have been done to obtain compensation or increased compensation, as if the Bill when enacted were a compulsory purchase order for the purposes of the 1981 Act.

## **Schedule 7 – Planning Conditions**

### **Part 1 – Qualifying Authorities**

243. *Paragraph 1* allows the Secretary of State, by means of an order, to name “qualifying authorities” for the purposes of Schedule 7. It is intended that these will be local planning authorities which, by the time the Select Committee in the House of Lords reports, have given the Secretary of State various undertakings about handling of planning applications (intended to be included in a Planning Memorandum which is being developed with local authorities). A similar arrangement was adopted for the planning aspects of the Channel Tunnel Rail Link.

244. *Paragraph 1* also allows the Secretary of State to make orders revoking the conferring of “qualifying authority” status and to make subsequent naming orders in certain circumstances. Before making such order, the Secretary of State is to consult the nominated undertaker and, if it is not the body requesting the order, the relevant local planning authority.

245. *Paragraph 2* allows for any order under paragraph 1 to set out any transitional arrangements that may be necessary (for example, were a local planning authority to cease to

be a qualifying authority for the purposes of the Bill whilst a number of undetermined planning applications were before it).

## **Part 2 – Development in the area of a unitary authority**

246. *Paragraph 3* establishes Part 2 as the regime to apply in respect of development carried out in the area of unitary authorities (for example, those local planning authorities in London).

247. *Paragraph 4* establishes the circumstances in which the planning conditions for which the Part provides apply, different conditions applying, in general, according to whether the development is in the area of a non-qualifying or qualifying authority.

248. *Paragraph 5* provides for certain matters of detail to be the subject of requests for the approval of the non-qualifying unitary authorities and provides that the only grounds on which they can refuse a request is that the development to which it relates should and could reasonably be carried out elsewhere within Bill limits, or that the design or external appearance of any building to which they relate ought to be modified to preserve the local environment or amenity, and is capable of being reasonably modified to do so.

249. *Paragraph 6* provides for certain matters of detail to be the subject of requests for the approval of the qualifying unitary authorities and sets out the grounds on which such authorities can refuse a request. The list of operations and works includes construction works, minor constructions works, fences and walls, artificial lighting, waste and spoil disposal and borrow pits.

250. *Paragraph 7* sets out construction arrangements over which a qualifying unitary authority shall have some control, including road transport, the handling of re-useable spoil and top soil, storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.

251. *Paragraph 8* provides that for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits, no disposal or excavation shall commence unless the nominated undertaker has first agreed with a qualifying unitary authority a scheme for the restoration of the land on which the disposal or excavation is to take place. The only ground on which the authority can refuse to agree such a scheme is that the scheme ought to be modified, and is reasonably capable of being so modified.

252. *Paragraphs 9 and 10* provide for a qualifying unitary authority to grant approval before any Crossrail works are brought into use, other than for stations, depots and the tunnelled sections of Crossrail. That approval is to be granted if the authority considers that no reasonably practicable measures to mitigate the effect on the local environment or amenity are necessary, or it has agreed a scheme for such measures.

253. *Paragraph 11* provides for any land used for construction purposes with respect to the scheduled works, where other restoration provisions of the Bill do not apply to it, to be restored in accordance with a scheme agreed with the unitary authority. If no scheme is so agreed within 6 months of completion of the scheduled works concerned, the scheme is

determined by the appropriate Ministers. This provision applies to both qualifying and non-qualifying unitary authorities.

### **Part 3 – Development not in the area of a unitary authority**

254. *Paragraph 12* establishes Part 3 as the regime to apply to development carried out in non-unitary authority areas (for example, Essex). Responsibility for such development is split between district councils and the county council. The Part therefore provides for conditions which apply to the development for which district councils are responsible and conditions which apply to the development for which the county council is responsible.

255. *Paragraph 13* establishes the circumstances in which the district planning conditions for which the Part provides apply, different conditions applying, in general, according to whether the development is in the area of a non-qualifying district council or qualifying district council. Paragraph 14 and 15 apply do not apply in relation to certain development, referred to in this paragraph as “excepted development”. The development in question is development for which the county council is responsible (and in relation to which the corresponding conditions found in paragraphs 21 and 22 apply).

256. *Paragraph 14* provides for certain matters of detail to be the subject of requests for the approval of the non-qualifying district councils and the only grounds on which they can refuse a request is that the development to which it relates should and could reasonably be carried out elsewhere within Bill limits, or that the design or external appearance of any building to which they relate ought to be modified to preserve the local environment or amenity, and is capable of being reasonably modified to do so.

257. *Paragraph 15* provides for certain matters of detail to be the subject of requests for the approval of the qualifying district council and sets out the grounds on which a qualifying district council can refuse a request. The list of operations and works includes construction works, minor constructions works, fences and walls and artificial lighting.

258. *Paragraph 16* sets out construction arrangements over which a qualifying district council shall have some control, including storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.

259. *Paragraphs 17 and 18* provide for a qualifying district council to grant approval before any Crossrail works are brought into use, other than for stations, depots and the tunnelled sections of Crossrail. That approval is to be granted if the council considers that no reasonably practicable measures to mitigate the effect on the local environment or amenity are necessary, or it has agreed a scheme for such measures.

260. *Paragraph 19* provides for any land used for construction purposes with respect to the scheduled works, where other restoration provisions of the Bill do not apply to it, to be restored in accordance with a scheme agreed with the district council. If no scheme is so agreed within 6 months of completion of the scheduled works concerned, the scheme is determined by the appropriate Ministers. This provision applies to both qualifying and non-qualifying district councils.

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261. *Paragraph 20* establishes the circumstances in which the country planning conditions for which the Part provides apply. The conditions only apply if the county council concerned is a qualifying authority.

262. *Paragraph 21* sets out the conditions that may be applied to requests for the approval of details in respect of a qualifying county council for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits.

263. *Paragraph 22* sets out construction arrangements over which a qualifying county council shall have some control, including storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway.

264. *Paragraph 23* provides that for the disposal of waste or spoil, or the excavation of bulk materials from borrow pits, no disposal or excavation shall commence unless the nominated undertaker has first agreed with the qualifying county council a scheme for the restoration of the land on which the disposal or excavation is to take place. The only ground on which the council can refuse to agree such a scheme is that the scheme ought to be modified, and is reasonably capable of being so modified.

265. *Paragraph 24* provide for a qualifying county council to have some control over the routes by which heavy goods vehicles travel by road to and from working and storage sites, sites where material might be re-used, and waste disposal sites.

#### **Part 4 – Supplementary**

266. *Paragraph 25* provides that the local planning authority is not required to entertain a request for detailed planning permission unless the nominated undertaker has first submitted to that authority a programme of the permissions it intends to seek from the authority in question, and an explanation of how the matters dealt with in the permission sought fit into the wider Crossrail scheme.

267. *Paragraph 26* sets out a process for local planning authorities, where they consider a request for detailed planning permission relates to matters which may affect nature conservation, the conservation of the natural beauty or amenity of the countryside, or a site of archaeological or historic interest, to seek the views of Natural England or the Historic Buildings and Monuments Commission for England (commonly known as English Heritage), as appropriate. Those bodies are to have 21 days to comment on any such request.

268. *Paragraph 27* sets out a similar consultation provision in respect of the Environment Agency.

269. *Paragraphs 28 and 29* set out a mechanism for the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly, to issue directions either restricting a local planning authority's powers under the Schedule, or to "call-in" a particular request for approval under the Schedule.

270. *Paragraphs 30-35* set out a mechanism for the nominated undertaker to appeal decisions by local planning authorities under the Schedule to the Secretary of State for Transport, and the Secretary of State for Communities and Local Government, acting jointly.

271. *Paragraph 36* empowers the Secretary of State, by order subject to negative resolution, to amend Schedule 7 to allow the Olympic Delivery Authority to become a “qualifying authority” in connection with Crossrail. A qualifying authority is a local planning authority which has given the Secretary of State undertakings concerning the handling of planning applications for Crossrail.

### **Schedule 8 – Extension of Permitted Development Rights: supplementary provisions**

272. Clause 15 of the Bill allows statutory undertakers to rely on their own permitted development rights for works they carry out in relation to Crossrail, provided that the significant impacts of such diversions have been environmentally assessed for the purpose of the project as a whole. However, *Schedule 8* enables the Secretary of State to intervene in this process for the purposes of avoiding a breach of a relevant Parliamentary undertaking or securing that the environmental effects of carrying out the development are not materially different from those assessed.

273. *Paragraph 1* provides the power for the Secretary of State to intervene to impose conditions on such development.

274. *Paragraphs 2 and 3* provide a further power for the Secretary of State to intervene in respect of proposed development where he is of the opinion that such development has not been the subject of environmental assessment or where it appears to the Secretary of State that a Parliamentary undertaking may be broken. The effect of this intervention is that the utility developer’s deemed planning permission for such works is suspended or liable to revocation.

275. *Paragraphs 4-6* provide a mechanism for notifying the concerned developer and responsible planning authority of the Secretary of State’s intervention and the reasons for it.

### **Schedule 9 – Heritage: disapplication and modification of controls**

276. *Schedule 9* essentially disapplies the normal heritage protections provided in respect of listed buildings, buildings in conservation areas, and ancient monuments, that might be affected by the Crossrail works. Notwithstanding these disapplications, the intention is to seek to agree the detailed arrangements that will apply to the relatively small number of such buildings etc likely to be significantly affected with English Heritage outside the Bill during its passage.

277. *Paragraph 1* lists in a table the buildings affected, and provides that in relation to the Crossrail works, if a listed building had been listed immediately before 15<sup>th</sup> December 2004 and is specified in the table:

- section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 should not apply;
- to the extent that a notice issued in relation to the building under section 38(1) of that Act requires the taking of steps which would be rendered ineffective or substantially

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ineffective by works proposed to be carried out in exercise of the powers conferred by the Bill when enacted, it should not have effect or cease to have effect;

- no steps may be taken under section 42(1) of that Act which would be rendered ineffective or substantially ineffective by such works and;
- no works may be executed for the preservation of the building under section 54 of that Act which will be rendered ineffective or substantially ineffective by such works.

278. The same disapplications apply to any building which was not a listed building before 15th December 2004 but is listed on or after that date.

279. The table also lists buildings which are situated in a conservation area but are not listed buildings. In relation to these buildings, section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is disappplied with respect to their demolition if the demolition is in exercise of the powers conferred by the Bill. A similar disapplication applies in relation to a building within an area which becomes a conservation area on or after 15th December 2004.

280. *Paragraph 2* deals with listed buildings which may be affected by settlement. In relation to these buildings similar disapplications as those above apply, save that the disapplication of section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 would only apply to works for the alteration or extension of the building which are carried out in exercise of powers conferred by the Bill for the purpose of maintaining or restoring its character as a building of special architectural or historical interest.

281. *Paragraph 3* provides that section 59 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply to anything done in exercise of the powers conferred by the Bill with respect to works.

282. *Paragraph 4* modifies the application of the Ancient Monuments and Archaeological Areas Act 1979 (“the 1979 Act”) in respect of Crossrail works:

- section 2 of the 1979 Act does not apply to any works authorised by the Bill;
- the powers of entry conferred by sections 6(1), 6A(1) and 26 are not to be exercisable in relation to land used for or in connection with the carrying out of such works;
- the provisions of the 1979 Act with respect to functions of a person as a guardian, and the provisions of any agreement under section 17, are to have effect subject to the powers conferred by the Bill with respect to works;
- section 19 is not to apply in relation to a monument which is closed by the nominated undertaker for the purposes of, in connection with, or in consequence of the carrying out of any of the Crossrail works;

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- regulations under subsection (3) or (4A) of that section are not to apply to the Crossrail works, and the power conferred by subsection (6) of that section is not to be exercisable so as to prevent or restrict the exercise of such powers;
- in section 25 of the 1979 Act, subsection (2) is not to authorise the superintendence of the carrying out of any of the Crossrail works, and subsection (3) is not to apply in relation to advice given in connection with the carrying out of any of those works;
- section 28 is not to apply to anything done in exercise of the powers conferred by the Bill with respect of works.
- section 35 is likewise not to apply to operations carried out in the exercise of those powers.
- section 39(1) is to have effect as if operations carried out in exercise of those powers were exempt operations; and
- subsection (1) of section 42 is not to apply to the use of a metal detector for the purposes of or in connection with the Crossrail works, and subsection (3) of that section is likewise not to apply to the removal of objects discovered by the use of a metal detector for those purposes.

283. *Paragraph 5* modifies the application of the National Heritage Act 1983 to the Crossrail works. The power of entry conferred by section 36(1) of the 1983 Act is only to be exercisable in relation to land used, or intended for use, for or in connection with the Crossrail works with the consent of a nominated undertaker, such consent not to be unreasonably withheld. Such consent may be given subject to compliance with any reasonable requirements or conditions imposed for reasons of safety or for the purpose of preventing interference with or delay to the works. Any disputes about this are to be determined by the appropriate Ministers unless the parties agree to arbitration. For this purpose the appropriate Ministers means the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport, acting jointly. And subsection (6) of section 36 of the 1983 Act, which regulates the right to enter land for the purposes of record keeping, is not to apply to land on which works authorised by the Bill are being carried out.

#### **Schedule 10 – Heritage: rights of entry**

284. *Schedule 9* seeks to give certain targeted rights of entry to English Heritage, given that their traditional rights of entry are in effect disappplied or qualified by virtue of Schedule 8.

285. *Paragraph 1* provides for anyone authorised by the Historic Buildings and Monuments Commission (“the Commission”) to enter land on which a scheduled monument is situated to inspect, advise and observe as appropriate. Anyone authorised by the Commission may also enter any land in Greater London for the purpose of inspecting or observing the works in respect of any building that would, but for Schedule 7, require listed building consent or conservation area consent. These rights are not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the rights

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will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

286. *Paragraph 2* requires the nominated undertaker to give notice to the Commission of any demolition of any building that they would, but for Schedule 7, require listed building consent. At least eight weeks notice is required, longer if agreed with the Commission, though in cases of emergency shorter notice can be given.

287. *Paragraph 3* provides for anyone authorised by the Commission to enter the building concerned to record it in advance of any such demolition. Again, this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

### **Schedule 11 – Application of other railway legislation**

288. *Paragraph 1* disapplies the Highway (Railway Crossings) Act 1839, as it is not proposed to install level crossings of highways on Crossrail.

289. *Paragraph 2* disapplies section 9 of the Railway Regulation Act 1842 for the same reason.

290. *Paragraph 3* incorporates with the Bill the provisions of the Railways Clauses Consolidation Act 1845, so far as applicable for its purposes and not inconsistent with its provisions, with exceptions and modifications.

291. *Paragraph 4* incorporates with the Bill the provisions of Part 1 of the Railways Clauses Act 1863, so far as applicable for its purposes and not inconsistent with its provisions. Sections 5 to 7 and 13 to 19 of the 1863 Act are to be excepted from incorporation.

292. *Paragraph 5* disapplies the Railway Companies (Accounts and Returns) Act 1911.

293. *Paragraph 6* applies section 55 and 56 of the British Transport Commission Act 1949 (provisions dealing with trespass on railways and stone throwing) to relevant railway works constructed under the Bill.

294. *Paragraph 7* modifies the application to Crossrail of various provisions of railway legislation that create a range of offences (such as failure to pay) so that they apply in a similar way to Crossrail as they do to the railways of Network Rail Infrastructure Limited and to the London Underground system.

### **Schedule 12 – Transfer schemes**

295. Parts 1, 2 and 3 set out the powers of the Secretary of State to make schemes for the transfer of property, rights and liabilities (“transfer schemes”) from himself or certain other bodies to any person, including the Secretary of State.

## **Part 1 – Transfers from Cross London Rail Links Limited and its subsidiaries**

296. *Paragraph 1* allows for transfers from Cross London Rail Links Limited (“CLRL”) or any of its subsidiaries. The Secretary of State is required to consult CLRL before making any such scheme.

## **Part 2 – Transfers from the Greater London Authority, Transport for London, the London Development Agency and their subsidiaries**

297. *Paragraph 2* allows for transfers from the Greater London Authority, the London Development Agency or Transport for London or any of their subsidiaries. The Secretary of State may exercise this power only for the purposes connected with Crossrail and only with the consent of the transferor.

## **Part 3 – Transfers from the Secretary of State and companies owned by Secretary of State**

298. *Paragraph 3* allows for transfers from the Secretary of State, or a company wholly owned by him, as defined, to anyone else. The transfer must be for purposes connected with Crossrail.

## **Part 4 – General provisions about transfer schemes**

299. *Paragraph 4* specifies certain types of property, rights and liabilities that may be included in a transfer scheme.

300. *Paragraph 5* provides that where property is transferred by transfer scheme new interests, or rights may be created in relation to that property in favour of the person from whom it has been transferred. Conversely, new interests and rights may be created in favour of the person to whom property has been transferred in relation to property that has been retained or transferred to another party. Transfer schemes may also create rights and liabilities between parties affected by a transfer scheme.

301. *Paragraph 6* provides that what is transferred by, or retained following, a transfer scheme may be named specifically or simply described.

302. *Paragraph 7* allows for a transfer scheme to make provision for contraventions of any terms applicable to the things transferred to be treated as not occurring. This will allow for the transfer of property, rights or liabilities that would otherwise not be transferable.

303. *Paragraph 8* provides for the transfer of shares in a subsidiary of the transferor not to be subject to any terms in relation to the transfer of those shares.

304. *Paragraphs 9 and 10* provide that a transfer scheme may modify the interests, rights and liabilities of third parties in relation to the things to be transferred.

305. *Paragraph 11* provides that a transfer scheme may impose obligations on the person to whom or from whom things are transferred to enter into agreements with and to execute instruments in favour of any other person specified in the scheme.

306. *Paragraph 12* provides for transfer schemes to contain supplementary provisions.
307. *Paragraph 13* provides for a transfer scheme to have effect at the time or times set out in the scheme.
308. *Paragraph 14* allows for a transfer scheme to be modified if the parties to it, or certain other parties, agree. Modifications can have effect from the date of the scheme, or later.
309. *Paragraph 15* provides for continuity of employment for employees who transfer as a part of any transfer scheme.
310. *Paragraphs 16 and 17* allow the Secretary of State to issue a direction requiring information to be provided by the relevant parties to enable him to make a transfer scheme, require that a direction must set out the a timescale for responding of no more than 28 days and describe what happens if the parties to whom a direction is given do not respond.

### **Schedule 13 - Disapplication and modification of miscellaneous controls**

311. *Schedule 13* disapplies or modifies a number of provisions in existing legislation where these are contradictory to the exercise of the powers sought for Crossrail or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.
312. *Paragraph 1* provides that no obligation or restriction imposed under ecclesiastical law or in relation to consecrated land shall impose any restriction on the powers conferred by the Bill.
313. *Paragraph 2* disapplies the London Overground Wires etc Act 1933 and any bye-law made under it, in respect of any wire or part of a wire erected or maintained as part of the Crossrail works.
314. *Paragraph 3* essentially disapplies sections 3 and 9 of the London Squares Preservation Act 1931 in respect of the Crossrail works. Works are to be carried out under, and use is to be made of, Hanover Square and Finsbury Circus, and this requires disapplications of relevant restrictions in the 1931 Act.
315. *Paragraph 4* disapplies parts of the London Buildings Acts (Amendment) Act 1939 with respect to anything held in connection with Crossrail by the Secretary of State or the nominated undertaker. The 1939 Act contains an exemption for certain buildings or structures belonging to a railway company and situated on a railway or within a railway or station premises. As land acquisition powers in the Bill are to be vested in the Secretary of State, this disapplication is required so that a similar exemption applies to Crossrail.
316. *Paragraph 5* disapplies section 34(1) of the Coast Protection Act 1949 in respect of Crossrail works, as it would require the prior consent of the Secretary of State to be obtained before the carrying out of any works affecting navigable waters (which includes the River Thames).

317. *Paragraph 6* modifies the application of various provisions of the Port of London Act 1968 in respect of the Crossrail works. These provisions would require licences to be obtained before certain works may be carried out and would preclude the carrying out of dredging operations or certain other operations affecting the bed or bank of the River Thames. The Port of London Authority will benefit from protective provisions set out in Part 6 of Schedule 14.

318. *Paragraph 7* modifies the application of various pieces of highways legislation that would require consent to be obtained before certain works (such as erecting scaffolding, the planting of trees or shrub in or near a highway, or the placing of a retaining wall near a highway etc) can be carried out.

319. *Paragraph 8* disapplies Part 1 of the Building Act 1984 with respect to building regulations, and building regulations in relation to certain buildings held in connection with Crossrail by the Secretary of State or the nominated undertaker. The 1984 Act contains an exemption for buildings belonging to a statutory undertaker. As land acquisition powers in the Bill are to be vested in the Secretary of State, this disapplication is required so that a similar exemption applies in relation to Crossrail.

320. *Paragraph 9* disapplies section 5 of the Food and Environment Protection Act 1985 in respect of Crossrail works. That section would require a licence to be obtained from the Secretary of State before certain deposits in the sea (which includes the River Thames) are made.

321. *Paragraphs 10 to 12* modify the application of the London Lorry Ban Order (“the Order”) in respect of Crossrail works. Given that the routing of large goods vehicles is intended to be one of the areas of control that qualifying planning authorities will have under the planning regime established under the Bill, paragraphs 10 to 12 restrict the right to refuse or condition a permit under the Order, with disputes to be settled by the Secretary of State. They also make provision for the grant of emergency permits, in the case where a permit is required within eight working days of application.

322. *Paragraph 13* disapplies various provisions of the Greater London Council (General Powers) Act 1986 concerning the doing of things under a street in respect of the Crossrail works. This is because the 1986 Act would otherwise require the consent of the relevant London borough to the demolition of a building or other structure under a street, and to other associated works.

323. *Paragraph 14* modifies the application of the New Roads and Street Works Act 1991 to the Crossrail works, as the 1991 Act contains a number of provisions which would otherwise restrict the ability of the nominated undertaker to carry out works in the street.

324. *Paragraph 15* disapplies the requirement to obtain an abstraction licence under the Water Resources Act 1991 in relation to the abstraction of water in connection with the construction of Crossrail. Part 3 of Schedule 16 provides alternative protection under the supervision of the Environment Agency.

*These notes refer to the Crossrail Bill as introduced in the House of Commons on 8th November 2007 [Bill 5]*

325. *Paragraph 16* applies the national rules rather than Greater London rules to the making of connections to public sewers for the drainage of Crossrail.

326. *Paragraph 17* disapplies various provisions of the Party Wall etc Act 1996 in respect of the Crossrail works. This removes the need for the nominated undertaker to issue a notice to an adjoining landowner before constructing certain walls and fences, or to secure the consent of that landowner before carrying out any excavation or erection, and ensures that an adjoining landowner has no right over any Crossrail works.

#### **Schedule 14 - Burial grounds: removal of human remains and monuments**

327. *Paragraph 1* requires the nominated undertaker to publish and display notice of his intent to remove any human remains or monument before any such removal, and sets out what such a notice should include. No notice is to be required in cases where the Secretary of State has notified the nominated undertaker that he is satisfied that the remains are more than a hundred years old, and that no relative or representative of the deceased is likely to object. Nor is a notice to be required in cases where the nominated undertaker already holds a licence to remove human remains under section 25 of the Burial Act 1857.

328. *Paragraph 2* sets out the circumstances in which the nominated undertaker may issue a licence, allowing for the removal and reinterment or cremation of human remains, to a relative or representative of the deceased, upon written request. The reasonable costs of removal and reinterment or cremation will be paid by the nominated undertaker.

329. *Paragraph 3* allows the nominated undertaker to remove human remains where no written request by a relative or representative is received, or where a licence has been issued but the remains have not been removed after 28 days. Such remains are to be reinterred in a burial ground or cremated in a crematorium.

330. *Paragraph 4* sets out the arrangements to apply to the removal of any monument associated with any human remains removed under the Schedule. Where a licence has been issued, the relative or representative of the deceased may also remove the monument associated with it, to re-erect it elsewhere or to dispose of it. The reasonable costs of so doing will be paid by the nominated undertaker.

331. *Paragraph 5* allows the nominated undertaker to remove any monument associated with any human remains he removes, or, where a licence has been granted, a monument has not been removed within 28 days. The nominated undertaker can also remove any monument associated with any human remains the subject of a licence held under the Burial Act 1857. Monuments removed may be re-erected where the remains are re-interred, or at some other appropriate place, or, failing that, are to be broken up and defaced.

332. *Paragraph 6* sets out the records required to be kept by the nominated undertaker in respect of any human remains or monuments removed under the Schedule.

## **Schedule 15 – Reinstatement of discontinued facilities**

333. *Schedule 15* provides that the nominated undertaker may reinstate facilities, the use of which has been discontinued as a consequence of Crossrail construction. This reinstatement may be on the original site or elsewhere within Bill limits.

334. *Paragraph 1* provides this power of reinstatement which may also be used to reinstate facilities and to thereafter reinstate permanently.

335. *Paragraph 2* provides that the deemed planning permission for such reinstatement, as provided for under the Bill, may be made subject to conditions imposed at the direction of the Secretary of State. Paragraph 2 makes provision for the regime associated with any such conditions.

## **Schedule 16 - Protective provisions**

336. *Schedule 16* contains provisions setting out the protections to be provided for various bodies likely to be affected by the works.

### **Part 1 – Protection for highways and traffic**

337. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the highway authority concerned agree to vary them. The bodies for which this protection applies include all the highway authorities for highways in which the powers of the Bill can be exercised (i.e. both the local highway authorities (local authorities and Transport for London) and, in respect of trunk roads, the Secretary of State). The arrangements set out here are in addition to the protection given to such authorities in Schedules 2 and 3 to the Bill (for example, the right to approve temporary closures, the creation of new accesses, and the construction of new or altered streets).

338. These arrangements will apply instead of arrangements which normally govern street works under Part 3 of the New Roads and Street Works Act 1991 (except that by virtue of paragraph 14(2) the regulations which govern reinstatement of streets under that Act will apply to reinstatement of highways under the powers of this Bill).

339. *Paragraph 3* imposes a general obligation to minimise disruption to traffic. This will apply to the nominated undertaker in relation to powers to stop up streets and to construct works.

340. *Paragraphs 4, 5 and 7* address works constructed under highways. Approval of plans by the highway authorities is required for works within 8 metres of the surface, and their consent is required for works which interfere with drainage or are within 2 metres of the surface. By virtue of paragraph 2 any consent or approval under these or any other provisions of this Part is not to be unreasonably withheld. In addition such works must be designed, constructed and maintained to carry the appropriate loading recommended for highway bridges.

341. *Paragraph 6* applies to works involving bridges. Approval of plans is required if there is any interference with a highway and controls are imposed over the way that the works are constructed.

342. *Paragraph 8* gives the highway authorities a right of access to inspect the construction of the works and paragraphs 9 to 16 contain miscellaneous provisions governing the way that works are constructed in highways, together with provision for reinstating streets after completion of the work, making good damage caused to highways and street furniture, and providing for reimbursement of costs incurred by highways authorities in connection with road diversions required for the works.

343. *Paragraph 18* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

## **Part 2 – Protection for electricity, gas, water and sewerage undertakers**

344. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State's powers under the Bill to acquire land) and the undertakers concerned agree to vary them. The undertakers which enjoy the benefit of these provisions are bodies holding licences under the Electricity Act 1989, licensed gas transporters under the Gas Act 1989, and licensed water and sewerage undertakers under the Water Industry Act 1991. Local authorities exercising sewerage functions under arrangements with the local sewerage undertaker under section 97 of the Water Industry Act are also protected.

345. The protection extends to the bodies in relation to apparatus belonging to or maintained by them for the purpose of their undertaking. However the arrangements will not generally apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (which establishes a nation-wide regime governing street works). Accordingly that Act and the regulations and codes of practice made under it (in particular the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and the Code of Practice "Measures necessary where apparatus is affected by major works (diversionary works)") will apply to the undertakers' apparatus in streets.

346. *Paragraph 2* sets out the general principle that apparatus is not to be moved under the powers of the Bill until replacement apparatus has been provided and is in operation. This principle applies except in exceptional circumstances where a certificate is issued by the appropriate Ministers allowing this requirement to be dispensed with. The appropriate Ministers are the Secretary for State for Transport acting jointly with the Secretary of State for Environment, Food and Rural Affairs in relation to water and sewerage undertakers and the Secretary of State for Business, Enterprise and Regulatory Reform in relation to other undertakers.

347. *Paragraphs 3 to 7* set out a procedure for dealing with diversion of apparatus (which can be required by either the nominated undertaker or the undertaker concerned) in consequence of the Crossrail works. This requires the nominated undertaker or the Secretary of State to provide rights and facilities for the replacement apparatus when it is able to do so, but otherwise the undertaker is required to use its best endeavours to obtain these. The terms relating to any such replacement apparatus are to be agreed or otherwise determined in accordance with the disputes procedure under paragraph 13.

348. *Paragraph 8* applies to apparatus which is not proposed to be removed: the nominated undertaker is to provide plans of the proposed works near to the apparatus and the undertaker can require protective measures to be undertaken, or require its removal (in which case the procedures under paragraphs 3 to 7 are to apply).

349. *Paragraphs 9 and 10* are intended to protect continued access to apparatus. In particular they provide that the undertaker is to continue to enjoy the same rights for the purpose of maintaining apparatus in streets which have been permanently stopped up under the powers of the Bill.

350. *Paragraph 11* provides for reimbursement of the undertakers' cost in connection with the diversion or protection of its apparatus (or arising from the cutting off of apparatus) and paragraph 12 provides an indemnity in respect of damage to apparatus or interruption to the undertakers service, caused by the construction of the works. This indemnity includes provision for reasonable compensation for any losses suffered by the undertaker.

351. *Paragraph 13* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by those Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes.

### **Part 3 – Protection of land drainage, flood defence, water resources and fisheries**

352. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the Environment Agency (“the Agency”) agree to vary them. The Agency is the body established under the Environment Act 1995 which has statutory responsibility for flood defence and land drainage, water resources and fisheries. By virtue of the definitions in this paragraph these arrangements apply to protect watercourses (except public sewers) and any drainage work, which is defined as a watercourse, including any flood plain, or any land drainage, flood defence or tidal monitoring work. The provisions apply to any specified work, defined as any work or operation authorised by the Bill which is likely to affect any drainage work or the flow, purity or quality of water in a watercourse or other surface waters or ground water to cause obstruction to fish or damage to any fishery, or affect conservation, distribution or use of water resources.

353. *Paragraphs 2 and 3* provide for the Agency to approve plans of any specified works and in approving plans to be able to make reasonable requirements (including requiring the nominated undertaker to construct protective works at its own cost). Approval of plans under these provisions is not to be unreasonably withheld.

354. *Paragraph 4* deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Agency's reasonable satisfaction, for the Agency to have the right to inspect the construction and to require alteration or removal of the works where they have not been constructed in accordance with the requirements of this Part.

355. *Paragraph 5* provides for the flood defence works constructed under the powers of the Bill to be maintained to the reasonable satisfaction of the Agency and paragraph 6 requires the nominated undertaker to make good any impairment to the efficiency of drainage works for flood defence purposes or any other damage.

356. *Paragraph 7* requires the nominated undertaker to take all reasonably practicable measures to prevent interruption of the free passage of fish in any fishery and contains provision for the nominated undertaker to prevent or make good damage to fisheries (a fishery is defined as any waters containing fish and the fish within or migrating to or from such waters and the spawn, spawning grounds or food of such fish).

357. *Paragraph 8* contains a general indemnity for the Agency in respect of claims against it arising from the construction of the specified works in respect of the Agency's functions protected by this Part.

358. *Paragraph 11* avoids duplication of consents by providing that an approval or consent given under this Part is to be treated as a consent for the purpose of the various provisions listed in that paragraph. Section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 would otherwise require consent for the execution of flood works in River Thames, section 109 of the Water Resources Act 1991 would require approval of structures in, over or under watercourses and Part 2 of the Water Resources Act would require a licence for impounding of water. It also disapplies the requirement under section 30 of that Act to give notice of proposals to construct boreholes for abstraction of water in connection with underground works.

359. *Paragraph 12* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the appropriate Ministers to be involved in the resolution of such disputes.

#### **Part 4 – Protection of electronic communications code networks**

360. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the operators concerned agree to vary them. The operators to whom these provisions apply are operators of an electric communications code network as defined in the Communications Act 2003.

361. The electronic communications code is the code set out in Schedule 2 to the Telecommunications Act 1984, and an electric communications code network is so much of an electric communications network or conduit system provided by an electronic communications code operator, (i.e. a person to whom the code is applied by a direction of the Secretary of State under the Communications Act) as is not excluded from the application of the code by such a direction.

362. The protection conferred by this Part applies to any works authorised by the Bill (“the authorised works”).

363. *Paragraph 2* clarifies the relation between the operation of the electronic communications code, Part 3 of the New Roads and Street Works Act 1991 (which regulates street works) and section 272 of the Town and Planning Act 1990 (which addresses removal of apparatus in land which has been compulsorily acquired).

364. Paragraph 23 of the electronic communications code (which imposes a procedure for the alteration of telecommunications apparatus by statutory undertakers) is to apply for the purpose of the authorised works excepted where those purposes are regulated by or under the New Roads and Streets Works Act 1991 (i.e. where the apparatus is in a street), or where the nominated undertaker has a right to remove telecommunications apparatus by virtue of the default powers contained in section 272 of the Town and Country Planning Act 1990 or in relation to removal of apparatus in streets stopped up under the powers of the Bill (which is addressed in paragraphs (3) to (8) of paragraph 4 of this Part). Paragraph 21 of the electronic communications code (which restricts other persons’ rights to require the removal of electronic communications apparatus) is excluded in the same circumstances.

365. *Paragraph 3* provides that the powers of Part 1 of the Bill for the temporary stopping up or diversion of highways are not to affect the statutory rights of operators to use that street for the purpose of installing or maintaining apparatus.

366. *Paragraph 4* protects operators’ rights of access to apparatus in streets which have been permanently stopped up under the powers of the Bill, but this protection is subject to the nominated undertaker’s rights to require the removal of that apparatus or to alter it.

367. The nominated undertaker is required to give notice of the proposed stopping up and the operator has a right, and where reasonably requested by the nominated undertaker, an obligation, to move its apparatus. There is provision for the undertaker to recover its costs but sub-paragraph (8) provides that the provisions of this part dealing with the recovery of costs for relocation works are not to apply where the relocation is required as a result of works which are major transport works or major highway works for the purpose of Part 3 of the New Roads and Street Works Act 1991. In such a case the cost sharing regime provided for under that Act will govern recovery of costs and consequently the amount recoverable will be

discounted by such amount as is prescribed from time to time under the cost-sharing regulations made under section 85 of that Act (the amount is currently 18% or 7.5% depending on the nature of the works).

368. *Paragraph 5* provides an indemnity for operators in respect of damage to apparatus or interruptions to the supply of its services caused by the construction of the authorised works (or by subsidence resulting from those works). This does not apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (i.e. works in streets).

369. *Paragraph 6* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes.

## **Part 5 – Protection of British Waterways Board**

370. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State's powers under the Bill to acquire land) and the British Waterways Board ("the Board") agree to vary them. The Board is a public corporation established under the Transport Act 1962 which owns and manages a network of waterways, comprising canal and river navigations, reservoirs and docks. A number of its waterways may be affected by the powers of the Bill, including in particular, the river Lea, the Grand Union and Regents Canals and the West India Dock. These arrangements apply to "canals" which means any canal or waterway owned or managed by the Board, including land held or used for the canal (such as towing paths). The nominated undertaker's works to which the provisions apply are any "specified works" defined as works in, across, under or within 15 metres of, or which may affect, any canal.

371. *Paragraph 2* makes clear that in relation to land of the Board, the compulsory powers of the Secretary of State to acquire land will be limited to "what is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works" authorised by the Bill.

372. *Paragraph 3* provides for the Board to approve plans of the specified works and in approving plans to be able to make reasonable requirements in relation to its canals. Such approval is not to be unreasonably withheld.

373. *Paragraph 4* deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Board's reasonable satisfaction and with minimum disruption to traffic on the canals, for the Board to have advance notice of commencement of construction and the right to inspect the construction work.

*These notes refer to the Crossrail Bill as introduced in the House of Commons on 8th November 2007 [Bill 5]*

374. *Paragraphs 5 and 6* deal with deposits of materials on, in or over canals and discharge of water into canals. These operations will require the Board's consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to the Bill to discharge water into watercourses is made subject, in relation to canals, to the terms of any consent given under these provisions.

375. *Paragraph 7* provides protection for access to or along towing paths. If this is temporarily obstructed and there is no alternative means of access, the nominated undertaker is required (so far as is reasonably practicable) to provide a substitute. These requirements are in addition to the obligation in paragraph 5(2) and (5) of Schedule 3 to ensure reasonable pedestrian access to premises adjoining a highway which has been temporarily stopped up and to obtain the consent of the highway authority for such closures.

376. *Paragraph 8* contains provision empowering the Board to give the nominated undertaker notice to act in circumstances where canal work is abandoned or is in such a condition that it does or may constitute a danger or interference with navigation. The Board may carry out remedial works at the nominated undertaker's expense in the event of default by the nominated undertaker.

377. *Paragraph 9* contains a general indemnity for the Board in respect of claims against it arising from damage to canals covered by the works and for the costs of making good such damage.

378. *Paragraph 11* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the appropriate Ministers to be involved in the resolution of such disputes.

## **Part 6 – Protection of Port of London Authority**

379. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the Port of London Authority ("the PLA") agree to vary them. The PLA is the statutory harbour authority for the Port of London under the Port of London Act 1968. The nominated undertaker's works to which the provisions apply are any "specified works" defined as works on, in, under or over the surface of land below the river (defined as the level of mean high water springs forming part of waters within the PLA's jurisdiction) or any land owned, occupied or used by the PLA for operational purposes.

380. *Paragraph 2* provides for the PLA to approve plans of the specified works, and in approving the plans to be able to make reasonable requirements in relation to the protection of the river or the use of its operational land for the purpose of performing its statutory functions. PLA's approval is not to be unreasonably withheld, and the paragraph also makes clear that the requirement for approval of plans does not reintroduce the controls under Part 5

of the Port of London Act 1968 (relating to works and dredging in the Thames) which are disapplied by Schedule 13 to the Bill.

381. *Paragraph 3* deals with the construction of the specified works. It provides in particular for these to be constructed with all reasonable dispatch and to the PLA's reasonable satisfaction and with minimum interference to navigation in the river and the PLA's statutory functions. The PLA is entitled, on notice to the nominated undertaker, to inspect and survey the construction of the specified works.

382. *Paragraph 4* deals with the deposit of gravel, soil or other material into the river, including allowing any such material to fall, or be washed into the river. Any such deposit will require the PLA's consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to the Bill to discharge water into watercourses is made subject, in relation to the river, to the terms of any consent given under these provisions. This paragraph also spells out that it is not to be taken as authorising anything which would be an offence under the legislation dealing with the pollution of water.

383. *Paragraphs 5, 6 and 7* contain miscellaneous protection in relation to construction of the specified works including requirements for removing obstructions to navigation which are exposed in the course of the works, provision for reimbursement of costs incurred by the PLA in addressing impacts on existing moorings and a requirement to provide lights or buoys or take other steps as may be required by the PLA for the prevention of danger to navigation.

384. *Paragraph 8* is intended to secure navigational safety in a case where a specified work is abandoned or falls into disrepair. The PLA is entitled to require the nominated undertaker to remove the work, or repair it, and restore the site to its former condition.

385. *Paragraph 9* applies the prohibition in paragraph 8(4) of Schedule 2 against the damage of the bed or banks of watercourses forming parts of a main river to any discharge of any water in connection with a specified work and affecting part of the river that is not a main river.

386. *Paragraph 10* provides that the powers under the Bill to navigate or moor barges, vessels or craft are subject to such directions as the PLA's harbour master may make.

387. *Paragraphs 11 and 12* make provision for the indemnity of the PLA, by the nominated undertaker, for damage caused to the bed or banks of the river. This liability is limited where the damage is attributable to the PLA.

388. *Paragraph 13* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 62 of the Bill). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

## **PUBLIC SECTOR FINANCIAL COST AND PUBLIC SECTOR MANPOWER IMPLICATIONS**

389. It is proposed that Crossrail construction will be funded from different sources; specifically, by the Government, via a grant from the Department for Transport of over £5 billion across the construction period, by Crossrail fare payers, by Transport for London, and by London business. The Mayor has indicated that, subject to enactment of the necessary legislation, he would propose to levy a supplementary business rate in London from April 2010. In addition, further contributions will be sought from certain businesses and developers directly benefiting from the project.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

390. The Regulatory Impact Assessment demonstrates that the costs to business and the regulatory impact of the Bill will be low (consideration of, for example, any associated business rates supplement will take place in the context of the relevant legislation and any consequent proposal). Where impacts are expected to occur, they will be mitigated by appropriate measures and compensation.

391. The full RIA can be obtained from Graham Stockbridge, Zone 2/19, Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR, or from [graham.stockbridge@dft.gsi.gov.uk](mailto:graham.stockbridge@dft.gsi.gov.uk).

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

392. The Secretary of State has made a statement that in her view the Crossrail Bill is compatible with the Convention Rights. The following rights are considered to be particularly engaged in relation to the Bill, although careful consideration has been given to all aspects of human rights in relation to these proposals.

393. As a Hybrid Bill, the Bill necessarily involves interference with the property rights and, potentially, the home and other rights of individuals. The potential for such effects particularly engages Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions), article 8 (the right to respect for private and family life) and, to the extent that any places of assembly or used for religious purposes are affected, article 9 (the right to freedom of thought, conscience and religion). Mitigation of the impact of such interference is provided by the compensation arrangements provided both under the Bill and also by a range of policies that the Secretary of State is adopting in relation to the scheme, including policies relating to hardship, land acquisition, business relocation and to noise and vibration impacts of the scheme. Taking into account the public and other benefits that will arise from the Crossrail development and the mitigation provided by the arrangements that have been provided, the Secretary of State is of the view that a fair balance has been struck and that any remaining impact on property and other rights is proportionate and can be and, in all the circumstances, is justified in this case.

394. The Bill contains provisions that provide for the determination of disputes by arbitration and, in some cases, permitting the Secretary of State to give directions in relation to matters under consideration. In the light of the applicability of standard procedures for arbitration and the availability of judicial review in relation to any decisions of the Secretary

*These notes refer to the Crossrail Bill as introduced in the House of Commons  
on 8th November 2007 [Bill 5]*

of State (or the Greater London Authority or Transport for London, should control of the project be devolved) the Secretary of State is of the view that the Bill is compliant with the requirements of Article 6 (the right to a fair trial).

### **TERRITORIAL EXTENT**

395. The Bill, like the Channel Tunnel Rail Link Act 1996 (and other Hybrid Bills), does not expressly limit the Bill's territorial extent. The land and works provisions are by nature local. The provisions under the heading "Railway matters", on the other hand, relate to matters which are the subject of a common regime under the law of England and Wales and Scotland and will extend accordingly.

396. Because the Sewel Convention provides that Westminster does not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

### **COMMENCEMENT**

397. The provisions of the Bill will come into force on Royal Assent.

# CROSSRAIL BILL

## EXPLANATORY NOTES

*These notes refer to the Crossrail Bill as introduced in the House of Commons on 8th November 2007 [Bill 5]*

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*Ordered, by The House of Commons, to be Printed, 8th November 2007.*

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LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by  
The Stationery Office Limited

£x.00