

**1<sup>st</sup> TRANSPORT FOR LONDON BILL (PRIVATE)****IN PARLIAMENT****REPORT OF SECRETARY OF STATE FOR TRANSPORT ON THE 1<sup>ST</sup>  
TRANSPORT FOR LONDON BILL****INTRODUCTION**

This report replaces the report from the Secretary of State for Transport from 20 October 2006 on the above Bill. The Government had previously objected to clauses 28 and 47-53. Following negotiations with Transport for London, the Government is now opposed to clauses 47, 48 and 53. The promoters have dropped clauses 49, 50 and 52.

**PART 6****MISCELLANEOUS****47. Confers powers on TfL to enter into derivative investments**

The Government remains opposed to this clause as currently drafted by TfL.

The Government's main objection to the original clause was that it allowed the use of derivatives by a local authority (which TfL is for the purposes of the local government capital finance legislation).

The amended clause no longer confers the power to use derivatives directly on TfL itself, but on its subsidiaries instead.

However, that change does not itself remove or reduce the risks of concern to the Government. If a company wholly owned by TfL were to incur unaffordable financial liabilities, there would inevitably be serious consequences for TfL in the first instance and ultimately for local or national taxpayers.

Derivative contracts involve complicated dealings in the financial markets which are very different from those conventionally undertaken by local government. TfL has argued that they could assist in the management, in particular, of the Public-Private Partnership contracts entered into by London Underground. The Government must, however, bear in mind that in the past derivative contracts have been misused by local government and have led to litigation in the House of Lords, which established their unlawfulness for local authorities.

The Government acknowledges that the clause contains provisions which are meant to ensure that the powers could be used only for prudent financial management and not for speculative purposes. However, the full implications of the clause are far from clear. The variety and complexity of derivative transactions make it extremely difficult to embody adequate safeguards in relatively concise primary legislation.

Coupled with this is the open-ended nature of the provision. The power would be conferred on any subsidiary, whether already extant or created at any time

in the future. The case for using derivatives seems weaker for some of the other existing TfL subsidiaries than for London Underground. And making the power available to unknown future subsidiaries must increase the risks for taxpayers.

Although the Government is not confident that these concerns could be fully addressed by further redrafting, it is however prepared to see the clause remain in the Bill for the time being, if TfL wishes to continue discussions with the Government before the next stage in the Parliamentary proceedings.

#### **48. Clarifies section 215(1) of the 1999 GLA Act**

The Government is opposed to this clause. It is concerned at the additional powers, particularly the potential of TfL (as the relevant authority) to raise funding for the public private partnerships rather than the PPP companies, and needs to fully understand TfL's position on these matters.

The clause seeks to clarify or extend the scope of powers granted to TfL under section 215(1) of the 1999 GLA Act. Broadly speaking, section 215(1) provides that where a Private Public Partnership (PPP) agreement is or has been entered into, TfL's powers include a power to enter into and carry out other agreements in connection with that PPP agreement.

Clause 48 provides that under section 215(1) of the 1999 Act TfL may enter into and carry out agreements in connection with a PPP agreement whether or not TfL is a party to that PPP agreement. It also provides that such agreements need not relate to the provision of property or rights relating to the PPP agreement or support or be consequential upon entering into the PPP agreement.

In correspondence with the Department, TfL has raised the option that the amended section 215(1) of the GLA Act could be used to enter into financial arrangements with third parties in relation to the PPP contracts. The possibility has been raised that TfL could use these powers to enter into financial agreements that are currently undertaken directly by the PPP companies. This could enable TfL to take on a higher level of financial risk than previously envisaged, and ultimately could place pressure on the Government to assist TfL if these risks materialised.

The Government is currently discussing with TfL the financial implications for both organisations should these extended financial arrangements be entered into. The Government would support the clause remaining in the Bill, if TfL wishes to continue discussions with the Government before the next stage in the Parliamentary proceedings.

#### **53. Clarifies the status of certain residential tenancies**

The Government is opposed to this clause because it believes it is unnecessary. The purpose of the clause seems to be to prevent residential tenancies of properties that are transferred to TfL being treated as either assured tenancies or rent act protected tenancies. However this is already provided for by article 5A of the GLA Roads and Side Roads (Transfer of

Property etc.) Order 2000, which was inserted in that Order by the Greater London Authority (Miscellaneous Amendments) Order 2001 ("the 2001 Order").

The clause seems to be concerned to ensure that assured or Rent Act protected tenancies cannot exist through an intermediate landlord, but the 2001 Order refers to the interest of the land under residential tenancy and so the identity of the landlord is not relevant. In addition the clause appears to have retrospective effect, whereas the provisions of the 2001 Order simply prevent existing tenants from gaining security of tenure as a result of the transfer to TfL, which they would not have if the property had remained vested in the Secretary of State.

The Government would support the clause remaining in the Bill, if TfL wishes to continue discussions with the Government before the next stage in the Parliamentary proceedings.

**Signed by**

**Graham Hanson  
Head of Transport Branch  
Government Office for London.**