

## TRANSPORT AND WORKS ACT 1992

### THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

#### THE LONDON UNDERGROUND (VICTORIA STATION UPGRADE) ORDER

---

#### EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of, and Schedule to, the draft London Underground (Victoria Station Upgrade) Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006. It also highlights and explains the requirement for, and impact of, certain departures from the Model Clauses for Railways contained in Schedule 1 to the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (“the model clauses”).

The Order is promoted by London Underground Limited (“the Company”) to permit the Company to construct and operate works and compulsorily to acquire land and rights in land for the purpose of the improvement of Victoria underground station. The proposed works comprise a new sub-surface ticket hall beneath Bressenden Place, the expansion of the existing Victoria Line ticket hall beneath Wilton Road, new lifts, sub-surface escalators and pedestrian links and new surface-level entrances to the ticket halls.

The Order is based on the model clauses but in some instances departs from those clauses and follows previous precedent orders or draws from the Model Clauses for Tramways contained in Schedule 2 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (“the model clauses for tramways”). This memorandum notes when the model clauses for tramways or precedent orders have been followed and, in the latter case, specifies those orders where relevant.

#### PART 1

#### PRELIMINARY

Part 1 of the Order contains preliminary provisions.

*Article 1 (Citation and commencement)* provides for the commencement and citation of the Order.

*Article 2 (Interpretation)* provides for the interpretation of the Order. Amongst other things, this article defines the Order limits as being the permanent limits and the temporary limits. The permanent limits are defined as comprising the limits of deviation and the limits of land to be acquired or used permanently. This is slightly different to the approach used in the model clauses but provides for greater clarity elsewhere in the Order in relation to the area in which the functions under the Order are to be exercised.

*Article 3 (Application of 1991 Act)* provides for the application of the New Roads and Street Works Act 1991 (1991 c.22). In addition to the model clauses, as well as providing that certain provisions of that Act *will* apply to the works executed under the powers of the Order, it also provides that certain provisions *will not* apply. These provisions are set out in a list in paragraph (3). Other additions to the model clauses are the inclusion of section 75 (inspection fees) within the scope of the provisions of the 1991 Act that will apply and, at paragraph (2), a provision allowing the Company to be treated in the same way as a highway authority in relation to major transport works. These provisions are relatively standard in complex projects of this type where significant works are required within the public highway (see, for example, the Stratford Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905) (“the Stratford Order”)) and are considered to be necessary in relation to the construction of the authorised works, which entail significant construction activity in and under streets.

## PART 2

### WORKS PROVISIONS

Part 2 of the Order contains provisions for, and relating to, the construction of works.

*Article 4 (Power to construct and maintain works)* would authorise the construction and maintenance of the principal works proposed (“the scheduled works”), which are described in *Schedule 1 (Scheduled works)* and shown on the plans and sections deposited in connection with the application. This article also provides for the construction and maintenance of works, for purposes ancillary to the scheduled works, necessary and expedient for the purposes of the scheduled works, and identifies such works. In identifying such works this article has been tailored to reflect the works required for the Victoria Station Upgrade, which differ from a typical railway project to which the model clauses are usually applied, being largely subterranean and including a number of unusual activities such as ground strengthening and tunnelling. Thus the Order makes no reference to diversion of watercourses (which will not be required) but provides for the Company to carry out various specified activities including the following: works to relocate street furniture, works to construct buildings apparatus and other works and conveniences, landscaping and other mitigation works and the felling of trees.

In addition, unlike the model clauses, paragraph (6) provides for the removal of temporary works. Such provisions can be found in the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120) (“the Merseytram Order”) (article 5) and are useful to allow the Company to construct the authorised works adequately and economically.

The article also explicitly provides for the temporary removal, storage and reinstatement of the “Little Ben” clock tower. This work will also be the subject of an application for listed building consent.

*Article 5 (Power to deviate)* provides for limits within which the Company can deviate in the construction of the proposed works. The article differs from the model clauses particularly in relation to vertical limits of deviation. The authorised works comprise both above-ground and below-ground elements (at different levels) and these call for vertical limits of deviation to be treated in a different way. In respect of the above-ground elements the Company has adopted a limit of deviation of three metres upwards. Because some of the below-ground elements of the authorised works are to be constructed in relatively close proximity to the surface of the ground, setting a similar upward vertical limit of deviation (or any limit referring to a fixed number of metres upwards) would not have been appropriate. In some cases this would have extended above the ground surface although the Company has no requirement for the surface of the land. In order to allow the Company sufficient flexibility to construct the authorised works but to make clear that these will not extend above a certain point, the formulation in paragraphs (2) and (3) has been adopted. In respect of those works specified in paragraph (2) the upward limit of deviation is defined as 4.5 metres below the surface of the ground but not so as to permit encroachment into any basement, cellar or vault. It is not possible to deal with all works in this way, however (for example, where escalators are concerned the depth of the work will necessarily vary). In respect of such works paragraph (3) applies, and the limit of deviation is specified in the relevant deposited section.

*Article 6 (Power to alter layout, etc., of streets)* is based on the model clauses for tramways. Although the Order relates to an underground railway, the nature of the works (which include the permanent provision of station entrances in the street and extensive construction works within streets) involve more activity in the street than is usual for a typical railway project and it is thus considered appropriate to include this provision. This article would permit the Company to alter the layout of streets in order to accommodate the revised underground station, entrances and other works, with the consent of the street authority (not to be unreasonably withheld). In addition to the powers in the model clauses for tramways, this article provides for (i) the altering of the width of any kerb, footway or verge within the relevant streets and (ii) the carrying out of works for the provision or alteration of parking places, loading bays, bus stop clearways and bus laybys. These provisions are required in order adequately to reconfigure the street environment and have some precedent in article 8 of the Merseytram Order.

*Article 7 (Power to execute street works)* would confer authority on the Company to interfere with and execute works in or under certain streets specified in *Schedule 2 (Streets subject to street works)* within the Order limits for the purposes of the authorised works. Paragraph (1)(d) differs from the model clauses in that it specifically authorises works necessary to prepare the ground for tunnelling, which is considered appropriate in the circumstances as it is anticipated that preparatory works to stabilise and harden the ground will form a significant part of the construction of the authorised works.

*Article 8 (Stopping up of streets)* provides for the permanent stopping up of streets as specified in *Schedule 3 (Streets to be stopped up)*. *Schedule 3* refers to only one street and the part to be stopped up consists of part of a footway only. This is necessary to accommodate a new station entrance. This article is a simplified version of the model clause, reflecting the minor nature of the stopping up.

*Article 9 (Temporary stopping up and diversion of streets)* provides for the temporary stopping up of streets subject to the consent of the street authority concerned (not to be unreasonably withheld but which may be subject to reasonable conditions) or, in the case of the temporary stopping up of those streets specified in *Schedule 4 (Streets to be temporarily stopped up)*, following consultation with the street authority. In addition to the model clauses, this article provides that the Company may use any street stopped up under the powers of this article as a temporary working site and gives the Company a specific power to divert part of Bressenden Place provided that an alternative route is put in place, both of which are considered necessary for the construction of the authorised works.

*Article 10 (Access to works)* would confer power to provide or improve access at such locations within the Order limits as the Company reasonably requires for the purposes of the authorised works as may be approved by the highway authority (such approval not to be unreasonably withheld). This provision is based on article 9(b) of the model clauses. Article 9(a) of the model clauses is not considered necessary in these circumstances.

*Article 11 (Construction and maintenance of altered or diverted streets)* makes provision for street alterations or diversions to be completed to the reasonable satisfaction of the street authority and for their maintenance by the Company for a period of 12 months, and by the relevant authority thereafter. References to new streets, bridges and tunnels are omitted as they are not necessary in these circumstances.

*Article 12 (Agreements with street authorities)* would authorise street authorities and the Company to enter into agreements relating to the construction of streets, works in or affecting streets and the stopping up, alteration or diversion of streets. It varies from the model clauses by making no reference to new streets, since this is not required in the circumstances and, at paragraph (a), following the precedent in the Merseytram Order (article 17) by providing for agreements to be made in relation to the strengthening, improvement, repair or reconstruction of a road, which is considered necessary given the nature of the authorised works.

*Article 13 (Discharge of water)* would enable the Company to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the proposed works, with the approval (not to be unreasonably withheld) of the authority to which the watercourse, public sewer or drain belongs, subject to allowing that authority to supervise works, and to certain other conditions. It varies somewhat from the model clauses by not including any reference to “a main river”, which is not relevant in these circumstances.

*Article 14 (Protective works to buildings)* would permit the Company to carry out certain protective works before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to buildings which may be affected by the works. Provision is made for certain restrictions and the payment of compensation. The geographical scope of this power is defined by reference to limits specified on the land plans.

*Article 15 (Planning permission: supplementary matters)* modifies planning legislation as to the treatment of land as operational land where planning permission is granted by direction of the Secretary of State. No trees the subject of a tree preservation order will be affected by the Order and so the references in the model clauses to tree preservation orders have been omitted.

*Article 16 (Power to survey and investigate land, etc.)* would confer upon the Company power to survey and investigate land and to make trial holes after notifying the owners and occupiers of the land, and includes provision for the payment of compensation. Reference to scheduled monument consent, which is included in the model clauses, is excluded here as no scheduled monuments are affected.

### **PART 3**

#### **ACQUISITION AND POSSESSION OF LAND**

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of or in connection with the intended works and the Company's railway undertaking.

*Article 17 (Power to acquire land)* would authorise the compulsory acquisition of the land shown on the plans deposited in connection with the application so far as required for the purposes of the intended works, or for any other purposes connected with the Company's railway undertaking.

*Article 18 (Application of Part 1 of the Compulsory Purchase Act 1965)* provides for Part 1 of the Compulsory Purchase Act 1965 (as modified by the Order) to apply to the acquisition of land under the Order as it would to a compulsory purchase authorised under the Acquisition of Land Act 1981.

*Article 19 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)* provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981, which contains vesting procedures for land subject to compulsory purchase powers.

*Article 20 (Power to acquire new rights)* would permit the Company to create and acquire easements and other new rights affecting land rather than the whole interest in any land. For this purpose, various enactments concerning compulsory acquisition and compensation would have effect as modified by *Schedule 5 (Modification of compensation and compulsory purchase enactments for creation of new rights)*.

*Article 21 (Powers to acquire subsoil only)* enables the Company to acquire subsoil interests in land only, though where a cellar, vault or the like is acquired then *Article 28 (Acquisition of part of certain properties)* will apply.

*Article 22 (Power to acquire land limited to subsoil lying more than 4.5 metres beneath surface)* empowers the Company to acquire, in respect of specified parcels of land, subsoil interests below a specified depth only. The relevant parcels of land are specified in *Schedule 7 (Land of which only subsoil more than 4.5 metres beneath surface may be acquired)*. This article differs from the model clauses in that a depth of 4.5 metres rather than 9 metres is specified. This is necessary because certain of the below-ground elements of the authorised works are higher than 9 metres beneath the surface. A figure of 4.5 metres is considered appropriate as this allows the Company to acquire sufficient land to construct the works whilst also making clear that in respect of parcels of land falling within *Schedule 7* no surface land is required.

*Article 23 (Rights under or over streets)* provides that the Company may use a street for the works without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation. In addition to the model clauses this article refers to the surface of the street. This addition has precedent in the Merseytram Order and the Stratford Order.

*Article 24 (Temporary use of land for construction of works)* provides that the Company may take temporary possession of land specified in *Schedule 6 (Land of which temporary possession may be taken)* for the construction of the scheduled works. The Company would not be permitted to remain in possession of the land for a period of more than 1 year after the completion of the works as specified in that Schedule. The article would also require the payment of compensation to the owners and occupiers of the land in relation to the temporary possession.

*Article 25 (Temporary use of land for maintenance of works)* provides that the Company may take temporary possession of land within the Order limits required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work in the 5 years following the beginning of public use of the works. Temporary works can be constructed on the land as reasonably necessary. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Paragraph (10) (which requires the consent of the street authority) is additional to the model clauses but is considered to be an appropriate protection for the benefit of the street authority concerned and has precedent in the Merseytram Order (article 37(10)).

*Article 26 (Disregard of certain interests and improvements)* provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

*Article 27 (Set-off for enhancement in value of retained land)* provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

*Article 28 (Acquisition of part of certain properties)* would enable the Company to acquire a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Lands Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965.

*Article 29 (Extinction or suspension of private rights of way)* provides for the extinction or suspension of private rights of way over land subject to compulsory acquisition or appropriation for the purposes of the Order. Such rights are suspended where the Company takes temporary possession, until this is given up. Provision for notification and the payment of compensation is included.

*Article 30 (Time limit for exercise of powers of acquisition)* provides a time limit of 5 years from the coming into force of the Order for the exercise of the proposed powers of acquisition and possession.

## **PART 4**

### **PROTECTIVE PROVISIONS**

Part 4 of the Order contains protective provisions.

*Article 31 (Statutory undertakers, etc.)* introduces *Schedule 8 (Provisions relating to statutory undertakers, etc.)*, which contains specific safeguards for statutory undertakers generally.

*Article 32 (For protection of Network Rail)* introduces *Schedule 9 (For protection of Network Rail)*, which contains specific safeguards for the benefit of Network Rail.

*Article 33 (For protection of specified undertakers)* introduces *Schedule 10 (For protection of specified undertakers)*, which makes provision for the protection of specified statutory undertakers.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

Part 5 contains a number of miscellaneous and general provisions.

*Article 34 (Traffic regulation)* would allow the Company, subject to the consent of the traffic authority, to prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles along certain roads in each case as specified in *Schedule 11 (Traffic*

*regulation*) until the opening of the scheduled works for use. This article also includes, in addition to the model clauses' provisions, more general powers at paragraph (2) in relation to traffic regulation, allowing the Company, in so far as it is necessary or expedient for the purposes of the construction, maintenance or operation of the scheduled works, to:

- revoke, amend or suspend in whole or in part any order made under the RTRA 1984;
- permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;
- authorise the use as a parking place of any road;
- make provision as to the direction or priority of vehicular traffic; or
- permit or prohibit vehicular access to any road.

Requirement is made for the chief officer of police and the relevant traffic authority to be consulted and notified in advance of the exercise of the powers under paragraphs (1) and (2) of the article. The article also includes a specific power to vary or revoke provisions made under the article.

These provisions are considered to be necessary in order properly to carry out the authorised works and clarify further the provisions already contained in the model clauses. The flexibility they afford will be necessary in order to adapt to refinements to the design of the project and to deal with the construction period effectively.

*Article 35 (Street and market traders)* allows the Company to revoke street and market traders' licences and consents or, with the consent of the Council, to vary such licences and consents where the Company consider that the use of these would impede the construction or maintenance of the authorised works. This article has a precedent in the Merseytram Order (article 71) and the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757) ("the Woolwich Order") and it is considered that a similar power is necessary in this case as there are a number of trading pitches in the street that fall within or close to the Order limits.

*Article 36 (Obstruction of construction of authorised works)* would make obstructing the construction of the proposed works or interfering with apparatus belonging to a person acting under the authority of the Company a criminal offence.

*Article 37 (Disclosure of confidential information)* makes disclosure of certain confidential information obtained upon entry to certain premises under *article 14 (Protective works to buildings)* and *article 16 (Power to survey and investigate land, etc.)* a criminal offence.

*Article 38 (Defence to proceedings in respect of statutory nuisance)* provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 ("the EPA") in respect of noise if the noise is created in the course of carrying out works authorised by this Order and which are unavoidable or works for which notice has been given under section 60, or consent obtained under sections 61 or 65 of the Control of Pollution Act 1974. Such a provision is not in the model clauses but is common in other Orders (for example, the

Merseytram Order (article 73) and the Stratford Order (article 46)) and is necessary for projects of this type. Railways (in the wider sense of the word) attract the protection of s.122 of the Railways Act 1993 which provides the defence of statutory authority to actions in nuisance. In addition, a defence of general statutory authority would be available by virtue of the power to operate under the Order. However, it has been doubted in caselaw (*London Borough of Camden v London Underground Ltd.* [2000] Env. L.R. 369) whether the defence under the Railways Act 1993 (or, it might be argued, under statutory authority more generally) might be available in respect of statutory nuisances that did not affect land but rather were potentially injurious to health, for example, nuisance under s.71(g) of the EPA. By their very nature, underground networks can cause noise emissions that might constitute a nuisance for the purposes of s.71(g) of the EPA. Accordingly, article 38(1) makes it explicit that the construction and operation of the authorised works will not constitute a statutory nuisance and that enforcement action can not be taken against it, provided certain limitations are met. Necessary ancillary provisions are then made in article 38(2) in relation to the Control of Pollution Act 1974. This article is based on the equivalent provision in the Merseytram Order.

*Article 39 (Certification of plans, etc.)* would require the Company to submit copies of the book of reference, plans and sections referred to in the Order to the Secretary of State for certification as true copies, following the making of the Order.

*Article 40 (Service of notices)* makes provision as to the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served.

*Article 41 (No double recovery)* makes provision to ensure that any compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition to the provisions of the model clauses, this article provides that there is not to be double recovery under two or more different provisions of the Order.

*Article 42 (Arbitration)* makes provision for differences arising under any provision of the Order, other than those referred to the Lands Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.