



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Crossrail Act 2008

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty,
July 2013

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Introduction

1. This memorandum provides an assessment of the Crossrail Act 2008 and has been prepared by the Department for Transport for submission to the Transport Select Committee. It is published as required by the process set out in the document *Post-Legislative Scrutiny – The Government's approach (CM 7320)*.
2. This assessment covers the powers conferred by the Crossrail Act 2008 (the Act) that have been used so far during the construction process up until the end of June 2013. Other powers intended to allow Crossrail to function as a fully operational railway have not yet been used and as such cannot be assessed at this time and should form part of any subsequent review once the railway is operational. It should be noted that some powers contained within the Act may never be used.
3. This assessment has sought the views of individuals from the Department for Transport, Transport for London, Crossrail Limited, the Local Authorities involved in the Planning Forum process and London Underground.

Objective of the Crossrail Act 2008

4. The main purpose of the Act is to secure the powers necessary to build Crossrail. Crossrail consists 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. This existing surface rail infrastructure is also subject to a number of improvement works being carried out by Network Rail known as the On Network Works. By connecting the main terminals of Paddington and Liverpool Street, Crossrail will enable interconnecting mainline train services to cross the centre of London via a number of new and existing, but expanded and enhanced stations. The project is expected to cost no more than £14.5bn (excluding Rolling Stock and Depot) and the full route is scheduled to be open in December 2019.

Hybridity

5. It should be noted that the Bill for the Crossrail Act was treated as a Hybrid Bill during its passage through Parliament because it contained 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 affects particular private interests in a way different from the generality of people affected by the Bill.

Implementation

6. The provisions in the Act came into effect on the 22nd July 2008 when the Act received Royal Assent. This allowed Crossrail Limited, a single purpose delivery body and the Nominated Undertaker on the Crossrail project, to commence the construction of the new Crossrail railway. London

Underground is also a Nominated Undertaker but only for the purposes of works to Bond Street station and Tottenham Court Road station.

Assessment of the Crossrail Act 2008

7. This assessment has been conducted by the Department for Transport. Officials from the DfT sought the views and input from the parties listed in paragraph 3, before developing this Command paper. The Department would like to express its thanks to these groups for their help and input. The structure of this assessment follows the outline of the Crossrail Act 2008, taking each clause in turn, and where applicable the associated Schedule; stating the purpose of the legislation, and how suitable it has been during the first five years of construction of the Crossrail project.
8. Where there were differing opinions on the success of a clause the DfT has taken a view in light of the evidence presented to Officials, and where there are specific recommendations on the viability of the legislation these are made and summed up in **Table A: Recommendation Index** on **page 22**.

Works

9. Section 1 – **Construction and maintenance of scheduled works** authorises the Nominated Undertaker to construct and maintain the works required for Crossrail and defines the area of land within which they must be completed in order to make use of the powers of the Act. Section 1 also brings into force Schedule 1 – **Scheduled Works**.
10. Schedule 1 details the work that Crossrail Limited can deliver under the powers of the Act in accordance with its duty to deliver the new railway infrastructure. Schedule 1 has been proven comprehensive and effective enough to allow Crossrail Limited to progress the works to date and this is evidenced by the significant construction progress that has occurred on the project so far.
11. Given the acceptance that Schedule 1 has been effective there are no specific recommendations to be made.
12. Section 2 – **Works: further and supplementary provisions** brings into force Schedule 2 – **Works: further and supplementary provisions**. Schedule 2 describes the ancillary works that Crossrail Limited is permitted to carry out in connection with those described in Schedule 1.
13. Schedule 2 describes the process for carrying out these additional works and any specific work sites that are applicable. Much like Schedule 1, Schedule 2 has proven to be fit for purpose and effective up to this point in the project, allowing the required works to be carried out successfully.
14. As Schedule 2 has been considered to be a success there is no specific recommendation to be made here.

15. Section 3 – **Highways** brings into effect Schedule 3 – **Highways**. Schedule 3 grants Crossrail Limited powers to permanently stop up certain highways listed in the Schedule by means of a notice to the local Highway Authority. For any other highway that is subsequently identified as needing to be stopped up Crossrail Limited have to abide by the normal process as set out by either the Highways Act 1980 or the Town and Country Planning Act 1990.
16. Schedule 3 also lists the highways which can be temporarily stopped up or diverted. As with a number of schedules in the Crossrail Act it was not possible to list every instance where powers apply and as a result additional stopping up requires formal consents from local authorities.
17. It is generally felt that the powers granted in Schedule 3 have worked well and have been fit for purpose. However a number of aspects of the process could have been improved. One such aspect is where a consultation to stop up the highway has been made under Section 3, yet consent is still often required under Schedule 17 before a work site can be established on the highway. It may have been a smoother process if Schedule 3 contained a disapplication of the requirements under Schedule 17. A related aspect is the need for a separate Traffic Order to change the traffic restrictions on a road, for example a one way road has been stopped up to allow access to a construction site and needs to be two way however the application under Schedule 3 does not authorise this.
18. There also appears to be a need for the clarification of the suspension of parking bays. The inclusion of a clause to deal with the remuneration of Local Authorities whose revenue stream has been affected by the suspension of parking bays may have avoided subsequent disputes around charging and allowed all parties to understand at the outset what to expect.
19. Section 4 – **Overhead Lines** disapplies powers granted under the Electricity Act 1989 and makes provision for an alternative method to grant consent to perform works that may interfere with existing overhead lines. This is ordinarily done by means of a joint written request to the Secretaries of State for Transport and Business, Enterprise and Regulatory Reform (as was).
20. At the time of drafting the main consideration in relation to overhead lines were Langley and Custom House construction sites. Crossrail Limited designed the works in such a way that interfering with the existing overhead lines was no longer necessary. However, the inclusion of this power within the Act was required in the event that it had not been possible to redesign the work packages and the overhead lines were going to be affected.

Land

21. Section 5 – **Temporary possession and use** brings into force Schedule 5 **Temporary possession and use of land**.
22. Schedule 5 authorises Crossrail Limited to take temporary possession of land for the purposes of any works authorised by the Act without the need to

acquire the land in question. The parcels of land specified in paragraph 1 of the Schedule are those where it was deemed prudent to limit the need to acquire the land as there were likely to be numerous objections if the Nominated Undertaker were to fully acquire them.

23. Schedule 5, particularly when applied by Section 47, has proven useful but in practical terms has been difficult to implement because service of a Section 47 notice on one party, following an agreement, is deemed as service of a Notice To Treat (NTT) on all the others. Where the party who wishes to agree Section 47 is, for example a tenant of Network Rail, "NR" (the acquiring authority) must also agree Section 47 with themselves in order to avoid a deemed service of NTT, which would be in contravention of agreements not to acquire Network Rail land.
24. Despite this Schedule 5 does work in practice although it could be made easier to use. It should be noted that when combined with Section 47, these only account for around 5% of all possessions made by Crossrail Limited. Also it was felt that the provision for 28 days notice to be given for temporary possessions has proven to be sufficient.
25. Section 6 **Acquisition of land within limits shown on deposited plans** provides for the compulsory acquisition of land and subsoil as they are set out in the deposited plans for Crossrail. The powers conferred by Section 6 are only valid for 5 years from the day that the Act was passed. There was precedence from the Channel Tunnel Rail Link (CTRL) that dictated this five year term and it has proven to be an appropriate length of time to conduct the acquisitions.
26. Section 6 also brings into effect Schedule 6 **Acquisition of land shown within limits on deposited plans**.
27. Part 1 of Schedule 6 details the parcels of land that are to be compulsorily acquired to enable Crossrail to be constructed and these are on course to be acquired before the powers expire in July 2013. Part 2 disapplies other legislation in relation to compulsory acquisitions and details the timescales for completing compulsory purchases; which are felt to be appropriate. Part 3 allows for the Nominated Undertaker to define the limits of the acquisition so that only the area which needs to be acquired is purchased and doesn't require the purchase, for example, of an entire building if only the subsoil is needed.
28. Schedule 6 has worked well in practice. It has struck the right balance between defining the areas of land which may be acquired and providing a mechanism through which other, non-specified land can be acquired. It would not have been possible to detail every area of land in Schedule 6 without having an extremely complex and specific Schedule.
29. The inclusion of the power to impose a pre-agreed *Restrictive Covenant*, whereby land could have been subject to certain development conditions e.g. prohibiting developments requiring deep excavation above Crossrail Tunnels;

without the need for Crossrail Limited to acquire the land, may have simplified the land acquisition process. At the time of drafting, there was no precedent for this power to be included. However it could have been included and would have prevented the numerous separate agreements that have been required to not acquire land whilst imposing restrictions on the future development. This Restrictive Covenant would need to be pre-agreed between all parties to avoid an unreasonable level of restrictions being imposed by a Nominated Undertaker.

30. Section 7 – **Acquisition of land not subject to the power under section 6(1)** provides the Secretary of State for Transport with the power to enact the legislation concerning compulsory purchases outside the limits shown on the deposited plans. This Section is required to allow this to happen but Crossrail Limited felt that it could have been more streamlined to provide for this power through the use of Transport & Works Act Orders (TWAOs).
31. With regards to the safeguarding provision under Section 7, Crossrail Limited were of the opinion that a more wide-ranging power to include safeguarding Utility apparatus may have been beneficial to allow tunnelling support works to be done more speedily.
32. Section 8 – **Extinguishment of private rights of way** ensures that once acquisitions of land have been made, the associated rights of way are extinguished and the land can be used for the purpose for which it was acquired.
33. Similarly Section 9 – **Extinguishment of rights of statutory undertakers etc** removes the rights of any statutory undertakers in the same way as if the land had been acquired under the Town & County Planning Act 1990 as Section 8 does not provide for this in the event that a statutory undertaker has any apparatus on site such as underground pipes or cables.
34. Sections 8 and 9 are required to ensure that land acquired under Sections 5, 6 and 7 can be used for the purposes for which it was acquired and so far during the construction process these powers have proven to be appropriate for the requirements of Crossrail Limited.

Planning

35. Section 10 – **Planning: general** allows for the Nominated Undertaker (Crossrail Limited) to make changes to scheduled works provided they are within the limits specified in the plans. However, the application of the amended Environmental Impact Assessment (EIA) regulations to the Crossrail Act 2008 means that if a change is deemed to have new likely significant environmental impacts which are ‘material’ then another Environmental Statement needs to be completed.
36. Section 10 also brings into effect Schedule 7 – **Planning Conditions** which sets out the various conditions and processes that must be gone through during the planning process for development in the areas of unitary and

non-unitary authorities: separately for Qualifying Authorities (the local authorities who having given sufficient assurances to the Secretary of State on the planning process and are permitted to retain an appropriate degree of control over the detailed planning aspects of Crossrail); and Non Qualifying Authorities (who retain a lesser degree of control over planning aspects).

37. Both types of authority listed above have different obligations conferred upon them by the Crossrail Act, and in turn this influences the way they are able to engage with Crossrail Limited and their levels of influence on the project.
38. The nature of Schedule 7 is that it underpins the engagement between Crossrail Limited and affected Local Authorities and is used as a tool for defining the processes and work required for Crossrail. It has worked so far as evidenced by the significant construction progress that has been made. There is a feeling amongst a number of Local Authorities that Schedule 7 could have been more extensive and included aspects on the Public Realm – the areas around stations – and how they are integrated with the existing public realm. However, this may not be feasible given there was a need for the Act to be deemed to give planning permission in order to simplify the planning regime thus minimising delays and costs to the project. These matters would perhaps need to be considered during the development of any similar Bill in the future in order to define an appropriate mechanism (either within or separately outwith) the Bill in order to address these issues.
39. Any issues relating to the operational interaction between Crossrail Limited and Local Authorities are not within the scope of this assessment.
40. Section 11 – **Permitted development: time limit** ensures that after the passing of the Crossrail Act, the work of constructing the railway would commence within 10 years i.e. by 2018 or the powers contained within the Act would expire. This has been achieved and it can be said that this inclusion within the Act has been fit for purpose. Section 11 also contains the power for the Secretary of State to ‘switch off’ Schedule 7 allowing the finished railway to be treated in the same way as any other railway for planning purposes. This power to ‘switch off’ has not yet been used but it is anticipated that it will be needed once construction is complete.
41. Section 12 – **Fees** allows for the appropriate Ministers to make provisions concerning the fees for planning applications in relation to Crossrail. These provisions have ultimately proven to be appropriate for the submitted planning applications. However, there have been comments from Local Authorities who feel that the amount of work required to process Schedule 7 requests for approval was underestimated during the Bill drafting process and that a separate agreement should have been included on their ability to charge more for Schedule 7 requests for approval.
42. In accordance with the provisions for fees ‘The Crossrail (Fees for Requests for Planning Approval) Regulations 2008’, which was developed in consultation with Local Authorities, provided them with an opportunity to input into the process. Again these matters would perhaps need to be considered

during the development of any similar Bill in the future in order to define an appropriate mechanism (either within or separately outwith) the Bill in order to address these issues.

43. Section 13 – **Power to disapply section 10(1)** exists in order to ensure that any future work conducted in association with the powers contained within the Act is not subject to the planning restrictions put in place by Section 10. However, this power has not been used so far and thus is outwith the scope of this review.
44. Section 14 – **EIA regulations: replacement development** applies to developments that have either replaced another building that has been demolished or requires planning permission outside of that granted under Section 10. It also serves to distinguish oversite developments from the Crossrail railway. For the purposes of these developments Environmental Statements have to be completed in accordance with the EIA regulations.
45. Section 14 has proven to be fit for purpose so far during the construction process and the properties listed in the table of Section 14(2) have so far been appropriate for the purpose of allowing Crossrail Limited to discharge their duties in accordance with the Act.
46. Section 15 – **Extension of permitted development rights** was enacted in order allow utility companies to rely on their permitted development rights for works in relation to Crossrail provided there are no new significant impacts than those in the Environmental Statement, otherwise a planning application would be required. This process allows the utility companies to conduct works on their own assets without additional works being conducted by Crossrail Limited. This has been appropriate as a process and has worked well so far during the construction process.
47. Section 15 also brings into effect Schedule 8 – **Extension of permitted development rights: supplementary provisions**. This Schedule permits the Secretary of State to intervene in any works carried out under the powers granted in Section 14 above. This has not yet been used during the construction of Crossrail and as such is outside of the scope of this review. However, its inclusion in the Act may yet be justified as construction progresses.

Heritage

48. Section 16 – **Disapplication and modification of controls** brings into effect Schedule 9 – **Heritage: Disapplication and modification of controls**.
49. This Schedule disapplies the usual listed building protections that would otherwise apply. Through engagement with English Heritage during the passing of the Bill, the tables listed within Schedule 9 provide a fairly comprehensive list of those buildings and areas affected by Crossrail and the mitigations required. These mitigations can range from the demolition of a listed building through to strengthening works needed for a listed building that

may be affected by settlement. As a process this has worked very well, allowing Crossrail Limited to do their job whilst protecting the interests of parties such as English Heritage. The scope of the tables contained within the Schedule could potentially have been wider, although there is a limit to what can feasibly be included in tables such as these without producing an unusually long and complex Schedule.

50. Section 17 – **Rights of entry** enacts Schedule 10 - **Heritage: Rights of entry** which provides English Heritage with certain targeted rights of entry in the event that their traditional rights have been disapplied by Schedule 9. However, this Schedule has not yet been used and so falls outwith the scope of this assessment.

Trees

51. Section 18 – **Power to deal with trees on neighbouring land** allows Crossrail Limited to remove, top or lop any tree which overhangs land which impacts on the construction or the safe operation of the Crossrail railway. These powers are adequate for works that take place within the defined limits in the Crossrail plans. However when the tree is outside of the Act's limits, Crossrail Limited cannot top or lop trees which overhang construction sites. In this case the Nominated Undertaker has to apply to the Local Authority in question in order to get consent to work on the tree(s). This can be a lengthy process and can be subject to the application for Tree Protection Orders (TPO) which can add further delays. Crossrail Limited suggested that a specifically drafted clause dealing with trees overhanging construction sites or one which detailed a streamlined method for the application of tree works may have been beneficial in order to ensure a smoother process for dealing with trees of this description.
52. Section 19 - **Disapplication of controls** ensures that Tree Protection Orders are disapplied for Crossrail works. This Section has been effective in disapplying these Tree Protection Orders for works within limits, allowing Crossrail Limited to carry out work on trees without being subject to the conditions imposed by a TPO, but as described under Section 18 above; where the tree in question overhangs a construction site but is outside of the defined limits there have been delays in dealing with them.

Noise

53. Section 20 – **Control of construction sites: appeals** allows for appeals made under the powers of Section 60 or 61 of the Control of Pollution Act 1974 about noise, to be decided upon by the Secretary of State or by arbitration (subject to agreement from parties) rather than by a magistrates court. The agreements made under the Control of Pollution Act 1974 have enabled Crossrail Limited to agree a set of best practicable means with Local Authorities to operate their construction sites with regard to noise. This process has worked well so far during the construction process.

54. Section 21 – **Proceedings in respect of statutory nuisance: defence** protects the Nominated Undertaker from statutory nuisance claims which can be brought by Local Authorities and individuals in instances where the works carried out could be affecting people’s health; this usually relates to noise. Under the Crossrail Act, Crossrail Limited can reach an agreement with the Local Authority about how noise will be controlled through the best practicable means. Provided this agreement is adhered to by Crossrail Limited they are exempt from prosecution by the Local Authority or individual parties. It should be noted that where the Nominated Undertaker is also taking all reasonable steps to reduce noise it makes them exempt from prosecution as there would be nothing more that could practicably be done to reduce noise. This applies to both the construction process and the operation of the railway.
55. As this is a large scale infrastructure construction project there will necessarily be some level of noise at construction sites, and having the Nominated Undertaker prosecuted for noise nuisance would hold up the project’s progress.

Railway Matters

56. Section 22 – **Objective of ORR in relation to Crossrail** adds the requirement for the Office of Rail Regulation (ORR) to facilitate the construction of Crossrail in addition to those requirements set out in the Railways Act 1993. It also provides the Secretary of State with the power to subsequently disapply this power once construction is complete.
57. The duties of the ORR as Rail Regulator means that it was appropriate to include them in the construction phase of the project so that there is a consistent level of responsibility for Crossrail once it is integrated into the rail network as a fully operational railway.
58. As the Crossrail project remains firmly in the construction phase at July 2013, it has not yet been necessary to turn off the power to give the ORR a duty over the construction of Crossrail although once initial services are open from December 2018 it is envisaged that this power will be needed. As such there is no recommendation to be made at this time.
59. Section 23 – **Duty of ORR to publish reports** requires the ORR to publish a report at the request of the Secretary of State either on what the ORR has done or proposes to do to further its objective of facilitating the construction of Crossrail, or on how the ORR has exercised or proposes to exercise its functions in connection with the operation of Crossrail.
60. To date the Secretary of State has not requested the ORR to publish a report on its activities supporting the construction of Crossrail, but may wish to do so in the future. Similarly the duty concerning the operation of Crossrail has not yet become a reality due to the continued construction, and so the ORR have not been required to publish a report on this either.

61. However, the inclusion of Section 23 is required in the event that the Secretary of State needs to assess the contribution of the ORR to the completion or operation of Crossrail.
62. Section 24 – **Licensing** ensures that once the construction of the central tunnel section of Crossrail is complete, and the rolling stock has begun to arrive for testing throughout the tunnel, the requirement under the Railways Act 1993 for a licence, or licence exemption, to be granted before trains can operate on the network will remain disapplied, as it has been during the construction phase. This disapplication lasts until the Secretary of State determines that the railway is ready for commercial use; currently scheduled for December 2018 when the central tunnel section will open.
63. The need to disapply this power will arise before Crossrail is a commercially operating railway and so is a necessary inclusion within the Act.
64. Section 25 – **Award of Crossrail franchises to public-sector operators** disapplies the provision of the Railways Act 1993 prohibiting public sector operators functioning as a franchisee. This disapplication allows a public sector operator to enter into a franchise agreement where:
 - a. The agreement relates wholly or mainly to services using the principle Crossrail tunnel; or
 - b. Where the agreement relates wholly or mainly to services operating on at least part of the Crossrail route and are likely to be affected by substantial disruption during the construction of Crossrail.
65. The appropriateness of this clause will only be known in the event that a franchise agreement is entered into with a public sector operator in the future.
66. Section 26 – **Disapplication of franchising and access exemptions** allows the Secretary of State to end the exemptions granted under 'The Heathrow Express Order' only for the purposes for, or purposes including, the facilitation of Crossrail passenger services.
67. This Section would be necessary in the event of a conflict between the objectives, or operation, of Crossrail and the Heathrow Express. However, it has not been used as evidenced by the continued operation of the Heathrow Express as at July 2013.
68. Section 27 – **Closures** allows the Secretary of State, if it is deemed necessary to expedite Crossrail works or passenger services, to disapply Sections 22 to 31 (inclusive) and Section 37 of The Railways Act 2005 as it relates to the discontinuance of existing services. This would in effect allow the Secretary of State to forego the closure procedures detailed in the 2005 Act for the benefit of Crossrail. This power has not yet been used and would not apply to the Crossrail services themselves once operational.
69. Section 28 – **Key system assets** disapplies the requirement under the Greater London Authority Act 1999 for the consent of Transport for London

over the treatment of those assets designated as ‘key system assets’ as they relate to Crossrail. Given the role of Crossrail Limited as Nominated Undertaker and the joint Sponsorship of the project by the Department for Transport and Transport for London, there is no need for the continued provision for TfL consent on key system assets and as such it is correct to disapply this legislation.

70. Section 29 – **Power to designate persons as “protected railway companies”** allows the Secretary of State to ensure a private company who is the manager of a railway contained in, or associated with, the central Crossrail tunnel section to be treated as a protected railway company as set out under The Railways Act 1993.
71. This power allows sections 59 to 65 (inclusive) of the Railways Act 1993 to apply in the instance where the “protected railway company” is declared insolvent and the Secretary of State must ensure the transfer of undertakings to another railway company to secure the continued services of the railway. This power has not yet been used as the project is still in the construction phase, but will be necessary once Crossrail is an operational railway in the event that an operator of Crossrail services was to be declared insolvent in the future.
72. Section 30 – **Duty to co-operate** confers on the controller of a railway asset for example London Underground or Network Rail, a requirement to enter into agreement with the Nominated Undertaker where a matter has been deemed to affect the construction, operation or maintenance of Crossrail, or the construction, operation or maintenance of a non-Crossrail railway asset.
73. This allows Crossrail Limited and the asset controller to agree on how the issue in question will be dealt with.
74. In the absence, or default of an agreement the dispute can be referred to arbitration as set out in Section 31 – **Arbitration after referral under Section 30(3)**.
75. This involves the Secretary of State being informed of the dispute by both parties, and grants the Secretary of State the power to direct the decision of the arbiter, whilst allowing the terms of that decision to be reached through arbitration.
76. This power has not yet been used, but would be necessary in the event of a referral to arbitration in order to prevent the construction of the Crossrail project from being delayed by arbitration proceedings.
77. Section 32 – **Arbitration under Section 30(3): multiple proceedings** allows for the Secretary of State to consolidate any proceedings brought under Section 30(3) provided they are subject to Section 30(3) and arbitration proceedings.

78. Similar to Section 31 this power has not yet been used but may be required in the future, meaning its inclusion in the Act is appropriate.
79. Section 33 – **Transfer of functions relating to works** allows for the Secretary of State, for the purposes of this Act, to acquire land from a railway operator and to transfer any statutory powers to himself, or a Nominated Undertaker, that were previously exercisable by the railway operator.
80. The inclusion of this power was necessary in order to facilitate the ongoing operation of the railway where the Secretary of State has acquired areas of land that are required for the operation of the railway.
81. Section 34 – **Application of section 122 of the Railways Act 1993** allows for the defence of ‘statutory authority’ against actions for nuisance, noise etc; where the party in question is exempt under Section 24 of the Crossrail Act. Ordinarily the defence of statutory authority is only available to licensed railway operators, and this Section disapplies that requirement.
82. Given the current nature of Crossrail as a construction project, and future requirements for testing on the central tunnel section before becoming a licensed railway, this Section was a necessary inclusion in the Act.
83. Section 35 – **Application of other railway legislation** brings into force Schedule 11 – **Application of other railway legislation**. Schedule 11 disapplies various provisions made by other pieces of railway legislation. As yet there have been no issues with any of the disapplications contained within this Schedule and no further recommendations for disapplications are made here.

Transfers

84. Section 36 – **Transfer Schemes** brings into effect Schedule 12 – **Transfer Schemes**. The purpose of Schedule 12 is to enable to Secretary of State for Transport to transfer any property, rights or liabilities that remain once the construction of Crossrail is complete from Crossrail Limited or other parties to the Secretary of State or a suitable nominee. As this has not yet occurred it is not possible to comment on the effectiveness of this power although it will be required should transfers take place.
85. Section 37 – **Transfer Schemes: Tax Provisions** brings into force Schedule 13 – **Transfer Schemes: Tax Provisions**. This Schedule is closely related to Section 12 and concerns the treatment of tax liabilities in the event of a transfer scheme. Similarly to Section 12, it is not possible to assess the effectiveness of this clause at present but it will also be necessary if transfers occur.
86. Section 38 – **Application of Greater London Authority Act 1999** relates to the disapplication of certain powers which would prevent Transport for London to enter into agreements with the Secretary of State for the purposes of furthering Crossrail. A number of these agreements have been entered into

for example the Sponsors Agreement, which without Section 38 would have led TfL to be in a position of conflict between their duties to the Crossrail project and the consents required of them by the Greater London Authority Act 1999.

87. As a number of agreements between the Secretary of State and Transport for London have been entered into, for example the Sponsors Agreement. This has been an effective and necessary inclusion in the Crossrail Act 2008.

Nominated Undertaker

88. Section 39 – **Holders of functions of nominated undertaker** allowed for Crossrail Limited to be appointed as Nominated Undertaker of the Crossrail project. This conferred upon Crossrail Limited the powers to deliver an operational railway.
89. The decision to appoint a Nominated Undertaker ensures that the project is being delivered by a team of experts, with this precedent being set by the Channel Tunnel Rail Link.
90. To not have appointed a Nominated Undertaker would have resulted in the Secretary of State discharging all of the duties contained within this Act which would have proven extremely time consuming for the Department for Transport.
91. With this in mind it is considered that the powers granted by this clause have been fit for purpose.

Miscellaneous

92. Section 40 – **Disapplication and modification of miscellaneous controls** brings into force Schedule 14 – **Disapplication and Modification of miscellaneous controls**.
93. Schedule 14 disapples further consents that Crossrail Limited would need to obtain in order to progress the project. This disapplication avoids the project potentially being held up whilst Crossrail Limited seeks these consents. However, any parties affected by this Schedule have their interests addressed by means of protective provisions (detailed in Schedule 17).
94. It is felt that the interests included for disapplication by Schedule 14 were reasonable as it would not be possible to disapply everything that would be required to cover every eventuality.
95. Section 41 – **Burial Grounds** was included in the Crossrail Act in order to deal with the disinterment of remains from various burial grounds that were known about and likely to be disturbed by Crossrail works. It also provides powers to deal with remains in the event that an unknown burial ground is disturbed. Section 41 brings into effect Schedule 15 – **Burial Grounds: removal of human remains and monuments**.

96. Ordinarily a licence is required to disinter bodies but for the Crossrail project this was changed to a statutory process under Schedule 15 whereby Crossrail Limited would have to advertise their intentions to disinter thus allowing relatives a chance to claim bodies for reinterment elsewhere, otherwise unclaimed remains need to be reburied or cremated within two months of being uncovered. From an archaeological perspective two months was not considered long enough and so this requirement is not applied providing the remains are over 100 years old.
97. However, this only applies to burial grounds still in use, or if it continues to have the appearance of a burial ground regardless of the date it was last used. There are no Schedule 15 consents in place, or identified to be needed for the central section or surface works.
98. There are several exhumation licences issued to Crossrail to allow for the exhumation of remains in burial grounds that no longer retain the look of a burial ground for example the Bethlem Burial Ground at Liverpool Street. These are issued by the Ministry of Justice under Section 25 of the Burial Act 1857, and as such are outside the scope of this review.
99. Section 42 – **Application of landlord and tenant law** is a standard inclusion in this kind of legislation. In this case it allows for the Secretary of State to reclaim land needed for a development agreement where there is an existing lease in place. Ordinarily certain conditions would need to be established before an eviction of a tenant could occur. Without the inclusion of this clause there would have been a very real possibility that the project could be delayed by the standard application of the law requiring these conditions to be established which would be impractical for a project as large and as cross-cutting as Crossrail.
100. This power appears to have been fit for purpose with no evidence to the contrary being presented to the Department during the compilation of this assessment.
101. Section 43 – **Disposal of Crown land** is another standard inclusion in this kind of legislation due to the restricted nature of disposing of Crown land and in particular Royal Parks. A standard lease granted for developments on or under Crown land would be in the region of 150 years, where as for Crossrail stations a lease of around 250 years would be required. This requirement for an extended lease is due to the nature of the railway infrastructure being constructed and its greater permanence than another development with a life cycle within the 150 year limit. This clause enables the Secretary of State to grant such a lease as would be required; provided the Crossrail development was occurring on Crown land for example the tunnels beneath Hyde Park.
102. Section 44 – **Restriction on land use for Crossrail purposes** allows Crossrail Limited to impose restrictions on future developments above tunnels and other underground works. This is in order to prevent any future development interfering with any of the Crossrail infrastructure.

103. Under English law the ability to impose restrictions on land without proving the restrictions would be beneficial or are required in order to protect an interest. Given that construction had to take place before an interest would be created, this clause was included to enable Crossrail Limited to acquire land and restrict future development on those sites before having an interest (the Crossrail infrastructure) to protect.
104. Section 45 – **Compensation for injurious affection** ensures that the Secretary of State is protected from any claims made by persons affected by the compulsory purchase process. Ordinarily the party acquiring the land, in this case the Secretary of State would carry out the required work and thus be liable for any claims made. However under a Hybrid Bill the Secretary of State is the acquiring authority whilst the Nominated Undertaker (Crossrail Limited) carries out the work required. Under this clause it would be Crossrail Limited and not the Secretary of State who is liable for any claims made under this Section. Any claims are dealt with by Crossrail Limited as they are best placed to assess the impacts.
105. Section 46 – **Compensation for water abstraction** disapples the provision of the Water Resources Act 1991 which entirely prohibits the causing of damage or loss to any person, resulting from the removal of water. Given that the Crossrail project involves a number of work areas concerned with the removal of water, this damage or loss may have been unavoidable and so this total prohibition has been relaxed by this clause. However, if damage was caused by the abstraction of water during the construction of Crossrail there would be an obligation on Crossrail Limited to pay compensation where appropriate. Crossrail Limited deal with any claims made as they are best placed to assess the impacts.
106. Section 47 – **Temporary possession agreements** allows for the Nominated Undertaker and a land owner to enter into negotiations for the temporary use and/or possession of the land in question under Schedule 5. This is intended to reduce the power to acquire land outright and was included to ensure that the Bill would not have to have multiple revisions in order to add new areas of land under Schedule 5. However this power only works when the land has one interest and not multiple owners, lessees or occupiers.
107. Section 47 was a late inclusion after the Bill had been introduced to Parliament. It is generally considered that Section 47 could have been improved upon with potentially greater clarity about when it was appropriate to use Section 47 i.e. when differentiating between 28 days and 3 months when referencing Schedule 5. This uncertainty can also lead to situations for example where Section 47s were served on Network Rail in order to allow them to do work on their own land. The clause means that parties are bound to enter into agreement under Section 47 whereas a less prescriptive obligation may have served better in certain cases.
108. Section 48 – **Application of Act to extensions** allows for all of the provisions that apply to the original Crossrail route as envisaged under the Bill, to apply to any potential extensions to the Crossrail route. Any extension would be

covered by the Act and in turn means that these applications could be made via a Transport and Works Act Order (TWAO) rather than under the more restrictive Planning Act process. This clause is required given the safeguarding in place around any future Crossrail route extensions to Reading in the west or Hoo Junction near Gravesend in Kent in the east, and the powers that would need to be in place to allow this extension to occur. It should be noted that there are currently no plans to extend the Crossrail route.

109. Section 49 – **Reinstatement of discontinued facilities** brings into force Schedule 16 – **Reinstatement of discontinued facilities**.
110. Schedule 16 allows facilities whose operation was discontinued due to the execution of the powers in the Crossrail Act to be reinstated either on the existing site or on alternative site. This was required as ordinarily where a construction project removes an existing installation the Nominated Undertaker would pay the landowner and it would be up to the landowner to find alternative accommodation. However, in certain instances this can be more difficult. For Crossrail, the Traveller’s site at Eleanor Street and the concrete batching plant at Westbourne Park which requires a site with rail access are two such examples. Schedule 16 ensures that in these circumstances the Nominated Undertaker has the power to remove the existing installations at sites, and relocate them subject to any planning conditions applied by the Secretary of State. The inclusion of this Schedule in the Act was necessary given the situations at Eleanor Street and Westbourne Park and has allowed them to be progressed appropriately.
111. Section 50 – **Protection of Interests** brings into effect Schedule 17 – **Protective Provisions**.
112. This Schedule ensures the interests of various parties are protected during the construction of the Crossrail project given the disapplication of controls provided by Schedule 14. The interests protected by this Schedule are:
 - a. Part 1 – appropriate highways authorities;
 - b. Part 2 – electricity, gas, water and sewerage utilities;
 - c. Part 3 – land drainage, flood defence, water resources and fisheries;
 - d. Part 4 – electronic communications code networks;
 - e. Part 5 – British Waterways Board;
 - f. Part 6 – Port of London Authority.
113. Each of these interested parties has certain statutory duties to perform and whilst their controls have been disapplied, this Schedule ensures that they have a mechanism to feed into processes such as detailed plan approval. This also provides a mechanism for utilities to replace their infrastructure if needed, without causing delays or disruptions to the Crossrail project, assuming it would be in conflict with the route.
114. This Schedule is required in order to counterbalance the disapplication of interests enabled by Schedule 14 so that the interests of parties listed above

were not disregarded and they felt engaged in the process. However, not all parties are captured by this process; predominantly Network Rail and London Underground. This is because of the extent of engagement that the Crossrail project has with these 2 parties, and so these relationships are governed in the form of Protective Provisions which are outside the scope of the Act.

115. It is felt that the arrangements set out in Schedule 17 have worked well so far during the construction process.
116. Section 51 – **Power to devolve functions of Secretary of State** allows the Secretary of State to devolve certain powers that only he can exercise, to those better placed to exercise them. An example of this is the power of compulsory purchase, where the Secretary of State is the only party in a position to exercise the power, but may not be best placed to conduct the compulsory purchases. Given the nature of the Crossrail project and its joint Sponsorship between the Department for Transport and Transport for London it made sense for compulsory purchases to be made by Transport for London given their extensive presence in London and the interactions of the Crossrail project with existing infrastructure.
117. Section 52 – **Correction of Deposited Plans** lays out the process for correcting any inaccuracies in the deposited Crossrail plans. It involves two Justices with appropriate jurisdiction to certify the mistake and correct it accordingly before depositing a copy in the office of the Clerk of the Parliaments, in the Private Bill Office of the House of Commons and with an appropriate officer of the local authority to which the land in the plans relates. This process would appear to be a reasonable and appropriate method to enable corrections to take place.
118. Section 53 – **Service of Documents** is a standard clause detailing the process for serving notices on individuals in accordance with existing legislation and is a necessary inclusion in the Act.
119. Section 54 – **Arbitration** captures occurrences throughout the Act where disputes can be referred to arbitration and sets out the appropriate arbiter for each type of unresolved issue be it the President of the Institution of Civil Engineers, an appointee by the Office of Rail Regulation or the Secretaries of State for Communities and Local Government and Transport acting jointly. This clause provides certainty as to who the appropriate person is to resolve disputes and ensures there is no further dispute over the appointment of the arbiter. It should be noted that there have been no referrals to arbitration as yet.

Final

120. Sections 55 to 58 are:

- a. **“Deposited plans”, “deposited sections”;**
- b. **Interpretation;**
- c. **Financial provisions;**
- d. **Short title.**

As these do not enact any powers in the Crossrail Act and are used to define administrative points no analysis is necessary or possible.

Summary

121. In summary, the Crossrail Act 2008 has, so far, proven to be broadly fit for purpose. This is evidenced by the progress that can be seen at the numerous Crossrail construction sites in and around London.
122. This is by no means a comprehensive assessment of the legislation which underpins the Crossrail project. This is because the project is only 5 years into the construction phase with roughly another 5 years before the first Crossrail services begin operation through the central tunnel section in December 2018. As a result there are a number of clauses and powers that have not been assessed and it is recommended that these are revisited as part of any future assessment of the Crossrail Act 2008.
123. There remain a number of challenges to overcome before the successful delivery of the Crossrail project is achieved, and this transformational infrastructure delivers the promised benefits to London and the south-east. However, the Department for Transport and Transport for London as joint Sponsors of the project are confident in Crossrail Limited’s ability to meet these challenges and ensure this vital transport link is delivered on time and on budget in accordance with the powers and duties given to them by the Crossrail Act 2008.

Table A: Recommendation Index

Section	No.	Clause Title	Related Schedule	Recommendation
Works	1	Construction and maintenance of scheduled works	Schedule 1 – Scheduled works	No specific recommendation to make.
	2	Works: further and supplementary provisions	Schedule 2 – Works: further and supplementary provisions	No specific recommendation to make.
	3	Highways	Schedule 3 – Highways	Potential to increase the scope of Schedule 3 to take account of additional requirements when stopping up the public highway e.g. parking bays, use of footpaths and traffic management issues and compensation.
	4	Overhead lines	Schedule 4 – Overhead lines: consent	No specific recommendation to make
Land	5	Temporary possession and use	Schedule 5 – Temporary possession and use of land	Clarification required in conjunction with Section 47 in order to have a smoother process for temporary possessions.
	6	Acquisition of land within limits shown on deposited plans	Schedule 6 – Acquisition of land shown within limits on deposited plans	Potential to include the power to impose a pre-agreed Restrictive Covenant without needing to acquire the land. Precedent now exists for such a power.
	7	Acquisition of land not subject to the power under section 6(1)	None	No specific recommendation to make.
	8	Extinguishment of private rights of way	None	No specific recommendation to make.

Section	No.	Clause Title	Related Schedule	Recommendation
Planning	9	Extinguishment of rights of statutory undertakers etc	None	No specific recommendation to make.
	10	Planning: general	Schedule 7 – Planning conditions	Potential for Schedule 7 to have greater scope in terms of how it deals with Public Realm works and the processing of requests for approval by Local Authorities. In any subsequent similar Bill development process this should be considered in discussions between the Promoters and Local Authorities to ensure as smooth and simple a planning process as possible.
	11	Permitted development: time limit	None	No specific recommendation to make.
	12	Fees for planning applications	None	'The Crossrail (Fees for Requests for Planning Approval) Regulations 2008', were developed in consultation with Local Authorities and provided them with an opportunity to input into the process. Again these matters would perhaps need to be considered in discussions between the Promoters and Local Authorities to ensure as smooth and simple a planning process as possible.
	13	Power to disapply section 10(1)	None	No specific recommendation to make.
	14	EIA regulations: replacement development	None	No specific recommendation to make.
	15	Extension of permitted development rights	Schedule 8 – Extension of permitted development rights: supplementary provisions	No specific recommendation to make.

Section	No.	Clause Title	Related Schedule	Recommendation
Heritage	16	Disapplication and modification of controls	Schedule 9 – Heritage: disapplication and modification of controls	No specific recommendation to make.
	17	Rights of entry	Schedule 10 – Heritage: Rights of entry	No specific recommendation to make.
Trees	18	Power to deal with trees on neighbouring land	None	Clause to specifically deal with trees overhanging construction sites outside of the limits of the submitted plans.
	19	Disapplication of controls	None	Clause to specifically deal with trees outside of the limits of deviation that overhang construction work sites
Noise	20	Control of construction sites: appeals	None	No specific recommendation to make.
	21	Proceedings in respect of statutory nuisance: defence	None	No specific recommendation to make.
	22	Objective of ORR in relation to Crossrail	None	No specific recommendation to make.
Railway Matters	23	Duty of ORR to publish reports	None	No specific recommendation to make.
	24	Licensing	None	No specific recommendation to make.
	25	Award of Crossrail franchises to public-sector operators	None	No specific recommendation to make.
	26	Disapplication of franchising and access exemptions	None	No specific recommendation to make.

Section	No.	Clause Title	Related Schedule	Recommendation
	27	Closures	None	No specific recommendation to make.
	28	Key system assets	None	No specific recommendation to make.
	29	Power to designate persons as “protected railway companies”	None	No specific recommendation to make.
	30	Duty to co-operate	None	No specific recommendation to make.
	31	Arbitration after referral under section 30(3)	None	No specific recommendation to make.
	32	Arbitration under section 30(3): multiple proceedings	None	No specific recommendation to make.
	33	Transfer of functions relating to works	None	No specific recommendation to make.
	34	Application of section 122 of the Railways Act 1993	None	No specific recommendation to make.
	35	Application of other railway legislation	Schedule 11 – Application of other railway legislation	No specific recommendation to make.
	36	Transfer schemes	Schedule 12 – Transfer schemes	No specific recommendation to make.
Transfers	37	Transfer schemes: tax provisions	Schedule 13 – Transfer schemes: tax provisions	No specific recommendation to make.
	38	Application of Greater London Authority Act 1999	None	No specific recommendation to make.

Section	No.	Clause Title	Related Schedule	Recommendation
Nominated Undertaker	39	Holder of functions of nominated undertaker	None	No specific recommendation to make.
	40	Disapplication and modification of miscellaneous controls	Schedule 14 – Disapplication and modification of miscellaneous controls	No specific recommendation to make.
Miscellaneous	41	Burial grounds	Schedule 15 – Burial grounds: removal of human remains and monuments	No specific recommendation to make.
	42	Application of landlord and tenant law	None	No specific recommendation to make.
	43	Disposal of Crown land	None	No specific recommendation to make.
	44	Prohibitions or restrictions on land use imposed for Crossrail purposes	None	No specific recommendation to make.
	45	Compensation for injurious affection	None	No specific recommendation to make.
	46	Compensation for water abstraction	None	No specific recommendation to make.
	47	Temporary possession agreements	None	Clarification required as outlined under Section 5 in order to have a smoother process for temporary possessions
	48	Application of Act to extensions	None	No specific recommendation to make.

Section	No.	Clause Title	Related Schedule	Recommendation
	49	Reinstatement of discontinued facilities	Schedule 16 – Reinstatement of discontinued facilities	No specific recommendation to make.
	50	Protection of interests	Schedule 17 – Protective provisions	No specific recommendation to make.
	51	Power to devolve functions of Secretary of State	None	No specific recommendation to make.
	52	Correction of deposited plans	None	No specific recommendation to make.
	53	Service of documents	None	No specific recommendation to make.
	54	Arbitration	None	No specific recommendation to make.



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