



Leeds Supertram Act 1993

1993 CHAPTER xv

PART IV

PROTECTIVE PROVISIONS

39 For protection of British Railways Board

For the protection of the railways board the following provisions shall, unless otherwise agreed in writing between the Executive and the railways board, have effect:

(1) In this section—

“construction” includes placing, alteration and renewal;

“the engineer” means an engineer to be appointed by the railways board;

“plans” includes sections, drawings, specifications, particulars and descriptions (including descriptions of methods of construction);

“railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible, and includes any lands held or used by the railways board for the purposes of such railway or works;

“the specified works” means so much of the authorised works as may be situated upon, across, under, or over or within 15 metres of, or may in any way affect, railway property:

(2) The Executive shall not under the powers of this Act acquire compulsorily any railway property but they may acquire such easements or other rights in or over any railway property delineated on the deposited plans as they may reasonably require for the purposes of the specified works:

(3) The Executive shall, before commencing the construction of the specified works, supply to the railways board proper and sufficient plans thereof for the approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

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Provided that approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 56 days after such plans have been supplied to the railways board the engineer shall not have notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as supplied:

- (4) If, within 56 days after such plans have been supplied to the railways board, the railways board give notice to the Executive that the railways board desire themselves to construct any part of the specified works which, in the opinion of the engineer, will or may affect the stability of railway property or the safe operation of traffic on the railways of the railways board, then, if the Executive desire such part of the specified works to be constructed, the railways board shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Executive in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before commencement of the construction of the specified works to ensure the safety or stability of railway property, and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Executive, if the railways board so desire, with all reasonable dispatch; and the Executive shall not commence the construction of the specified works until the engineer shall have notified the Executive that the protective works have been completed:
- (6) The Executive shall give to the railways board not more than six months and not less than 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property:
- (7) The construction of the specified works shall, when commenced, be carried out—
 - (a) with all reasonable dispatch in accordance with the plans approved, or deemed to be approved, or settled as aforesaid;
 - (b) under the supervision (if given), and to the reasonable satisfaction, of the engineer;
 - (c) in such manner as to cause as little damage as may be to railway property; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways board or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction shall be caused or take place in consequence of the construction of the specified works, the Executive shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction:

Provided that nothing in this paragraph shall impose any liability on the Executive with respect to any damage, cost, expense or loss which is attributable to the neglect or default of the railways board or their servants or agents:

- (8) The Executive shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and supply him with all such information

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as he may reasonably require with regard to the specified works or the method of construction thereof:

- (9) The railways board shall at all times afford reasonable facilities to the Executive and their agents for access to any works carried out by the railways board under this section during their construction, and shall supply the Executive with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (10) If any alterations or additions, whether permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, and the railways board give to the Executive reasonable notice of their intention specifying the alterations or additions to be carried out, the Executive shall pay to the railways board the reasonable cost thereof including, in respect of any permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by the railways board in maintaining, working and, when necessary, renewing any such alterations or additions:
- Provided that, if the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Executive to the railways board under this section:
- (11) The Executive shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the Executive as provided by paragraph (4) above or in constructing any protective works under the provisions of paragraph (5) above, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the railways board in maintaining and renewing such works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
 - (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, repair or failure of the specified works or from the substitution, suspension or diversion of services which may be necessary for the same reason;
 - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary as a result of the specified works or the failure thereof;
 - (e) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by him of the construction of the specified works:
- (12) If at any time after the completion of the specified works the railways board shall give notice to the Executive that the state of repair of the specified works prejudicially affects railway property, the Executive shall take such steps as may be reasonably necessary to avoid the prejudicial effect on railway property:
- (13) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any railway of the railways board, the

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Executive shall consult with the railways board and comply, subject to the approval of the Secretary of State, with the board's reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign will not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:

- (14) The Executive shall be responsible for, and make good to the railways board, all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the railways board—
- (a) by reason of the construction or repair of the specified works or the failure thereof; or
 - (b) by reason of any act or omission of the Executive, or of any person in their employ, or of their contractors or others whilst engaged upon the construction or repair of the specified works;

and the Executive shall indemnify the railways board from and against all claims and demands arising out of or in connection with the construction or repair of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done by the railways board on behalf of the Executive under the provisions of this Act, or in accordance with plans approved by the engineer, or in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the neglect or default of the railways board, or of any person in their employ, or of their contractors or agents) excuse the Executive from any liability under the provisions of this section:

Provided that the railways board shall give to the Executive reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Executive:

- (15) Any difference arising between the Executive and the railways board under this section (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration.