



# Tamar Bridge Act 1998

## 1998 CHAPTER iv

### PART V

#### MISCELLANEOUS

#### **32 Power to promote bridge and ferry and encourage visitors**

- (1) The Authorities may, by advertisement or otherwise, promote the bridge and the ferry and promote or encourage visits to the bridge and to the ferry by persons for recreation, for health purposes or for the purposes of informing themselves about the bridge and the ferry and their operation.
- (2) The Authorities may do anything incidental to their power under subsection (1) above including, without prejudice to the generality of the foregoing, providing or encouraging any other person to provide meals, refreshments and entertainment and facilities therefor and facilities for recreation, conferences and exhibitions.

#### **33 Application of order and byelaws**

- (1) Any Order made under or by virtue of section 43 (Tolls) of the Act of 1957 or section 6 of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 in relation to the existing bridge and in force at the passing of this Act shall apply to the bridge as it applies to the existing bridge.
- (2) Any byelaws made under section 71 (Byelaws) of the Act of 1957 and in force at the passing of this Act shall have effect as if references therein to “the bridge” were references to the bridge (as defined by this Act).
- (3) Byelaw 30 of the Tamar Bridge Byelaws 1965 is hereby repealed.

#### **34 Amendments to Act of 1957**

- (1) In section 4 (Interpretation) of the Act of 1957—
  - (a) there are hereby inserted the following definitions:—

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“the Act of 1998” means the Tamar Bridge Act 1998;

“tidal work” means so much of any work authorised by this Act or the Act of 1998 as is on, under or over tidal waters or tidal lands below the level of mean high-water springs;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;” and

- (b) for the definition of “the bridge” there is hereby substituted the following definition:—

“the bridge” has the meaning given by section 2 (Interpretation) of the Act of 1998”.

- (2) For section 27 (Laying out and repair of carriageways and footways) of the Act of 1957 there is hereby substituted—

**“27 Laying out of bridge and works to carriageways, cycleways and footways**

- (1) The Authorities may from time to time lay out the bridge or any part thereof, for carriageways, cycletracks and footways or alter the layout of the bridge, as they think fit.
- (2) The Authorities may by any such layout or alteration of layout vary the class of traffic which may use any part of the bridge.
- (3) The Authorities may sewer, level, pave, metal, flag and channel any carriageways, cycletracks and footways on the bridge and may from time to time execute all such works and do all such acts in, under or on any such carriageways, cycletracks and footways as they may think fit in exercise of their powers and in performance of their functions under this Act or the Act of 1998 including breaking open the soil and pavement of such carriageways, cycletracks and footways and any sewers, drains or tunnels within or under the same.
- (4) In the exercise of their powers under this section the Authorities shall cause as little inconvenience as circumstances allow.”.

- (3) In section 33 (As to closing of bridge) of the Act of 1957—

- (a) for subsection (1) there is hereby substituted the following subsection:—

“(1) The Authorities may whenever in their opinion it is necessary so to do for the purposes of the maintenance, repair, strengthening, widening, improvement, alteration, extension, renewal, reconstruction or replacement of the bridge, or because of the likelihood of danger to the public or of serious damage to the bridge or in case of emergency, wholly or partially close the bridge or any portion thereof to traffic, or to traffic of any class, or divert traffic from one part of the bridge to any other part of the bridge:

Provided that (except in cases of emergency or when the likelihood of danger to the public or serious damage to the bridge is imminent) the Authorities shall not less than 7 days before closing the bridge publish a notice stating the day and time when the bridge will be closed and the period during which it is estimated it will remain closed in—

- (a) a newspaper circulating in the city;

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- (b) a newspaper circulating in the county; and
  - (c) a conspicuous place at or near to the approaches to the bridge; and in such other manner (if any) as the Authorities consider desirable.”; and
- (b) the following subsection is hereby added after subsection (2):—
  - “(3) A person who uses any part of the bridge for the time being closed, or from which traffic has been diverted, under this section, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (4) In section 36 (Works below high-water mark to be subject to approval of Secretary of State) of the Act of 1957—
  - (a) in subsection (1) for the words “Subject to the provisions of this Act any work authorised by this Act so far as the same shall be on under or over tidal waters or tidal lands below high-water mark of ordinary spring tides” there are hereby substituted the words “A tidal work”;
  - (b) in subsection (2) for the words “or extension of any such” there are hereby substituted the words “extension, reconstruction or replacement of a tidal”;
  - and
  - (c) for subsection (3) there is hereby substituted the following subsection:—
    - “(3) If a tidal work is constructed, altered, extended, reconstructed or replaced in contravention of this section—
      - (a) the Secretary of State may by notice in writing require the Authorities at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition or so near to its former condition as is acceptable to him, and if, on the expiration of 30 days beginning with the date when the notice is served upon the Authorities, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice; or
      - (b) if it appears to the Secretary of State urgently necessary to do so, he may himself remove the tidal work or part of it and restore the site to its former condition or so near to its former condition as is acceptable to him;
- (5) For section 37 (Provision against danger to navigation) of the Act of 1957 there is hereby substituted—

**“37 Provision against danger to navigation**

- (1) In case of injury to or destruction or decay of a tidal work, or any part thereof, the Authorities shall as soon as reasonably practicable notify Trinity House and the Queen’s Harbour Master and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House, after consulting the Queen’s Harbour Master, shall from time to time direct.

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- (2) If the Authorities fail to notify Trinity House as required by this section or to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.”.
- (6) For section 38 (Abatement of work abandoned or decayed) of the Act of 1957 there is hereby substituted—

**“38 Abatement of work abandoned or decayed**

- (1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the Authorities at their own expense either to repair and restore the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.
- (2) Where a work authorised by this Act or the Act of 1998 and consisting partly of a tidal work and partly of works on or over land above the level of mean high-water springs is abandoned or allowed to fall into decay and that part of the work on or over land above the level of mean high-water springs is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Authorities, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Authorities.”.
- (7) For section 39 (Survey of works by Secretary of State) of the Act of 1957 there is hereby substituted—

**“39 Survey of tidal works**

The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct a tidal work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Authorities.”.

- (8) In section 40 (Permanent lights on works) of the Act of 1957—
- (a) in subsection (1) for the words “the corporation of Trinity House of Deptford Strond” there are hereby inserted the words “Trinity House, after consulting the Queen's' Harbour Master,”; and
- (b) for subsection (2) there is hereby substituted the following subsection:—
- “(2) If the Authorities fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.”.
- (9) For section 41 (Lights on works during construction) of the Act of 1957 there is hereby substituted—

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#### **“41 Lights on works during construction**

- (1) The Authorities shall at or near a tidal work during the whole time of the construction, alteration, extension, reconstruction or replacement of the same exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation, as the Secretary of State, after consulting the Queen’s Harbour Master, shall from time to time direct.
  - (2) If the Authorities fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.”.
- (10) After section 46 (Regulations as to payment of tolls and charges) of the Act of 1957 there is hereby added the following section:—

#### **“46A Offences**

- (1) A person who, without reasonable excuse, refuses to pay any toll for which he is liable or attempts to evade payment of any such toll shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (2) Any person who contravenes or fails to comply with a provision of regulations under section 46 (Regulations as to payment of tolls and charges) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- (11) In section 60 (Accounts and deficiencies) of the Act of 1957, at the end of paragraph (e) of subsection (1) there are hereby inserted the words “and for the purposes of the Act of 1998”.
- (12) In section 67 (For further protection of certain statutory undertakers) of the Act of 1957—
- (a) for subsection (1) there are hereby substituted the following subsections:—
    - “(1) Nothing in this section shall apply in relation to apparatus in respect of which the relations between the Authorities and the undertakers are regulated by the provisions of Part III of the Act of 1991 as having effect with the modifications made by section 3 (Application of Act of 1991) of the Act of 1998.
  - (1A) In this section unless the subject or context otherwise requires—

“apparatus” means—

    - (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by such undertakers; or
    - (b) in the case of gas undertakers, mains, pipes or other apparatus belonging to, or maintained by, such undertakers for the purposes of the transportation of gas; or

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- (c) in the case of water undertakers, mains, pipes or other apparatus belonging to, or maintained by, such undertakers for the purposes of water supply; or
- (d) in the case of sewerage undertakers, any sewer vested in a sewerage undertaker under the Water Industry Act 1991 including any manholes, ventilating shafts, pumps or other accessories belonging to or forming part of any such sewer;

and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner no less efficiently than previously;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

“undertakers” means any of the following, namely, a licence holder within the meaning of Part I of the Electricity Act 1989, a public gas transporter within the meaning of section 7 of the Gas Act 1986, a water undertaker and a sewerage undertaker; and in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.”;

- (b) in paragraphs (3) and (4) after each reference to “this Act” there are hereby inserted the words “or the Act of 1998”;
- (c) in paragraph (7) after the words “made under section 71 (Byelaws) of this Act” there are hereby inserted the words “or the temporary stopping up or diversion of any street under section 24 (Temporary interference with highways) of the Act of 1998”;
- (d) for paragraph (8) there are hereby substituted the following paragraphs:—

“(8) Subject to paragraph (8A) below, the Authorities shall pay to the undertakers the costs and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (4) above, less the value of any apparatus removed under the provisions of this section (that value being calculated after removal) and shall also make compensation to the undertakers—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason or in consequence of the execution, maintenance, use or failure of any such works:

(8A) If in pursuance of the provisions of this section—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing

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apparatus of worse type, or of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension; or

- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was;

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Authorities, or, in default of agreement, is not determined by arbitration to be necessary, then—

- (i) if it involves cost in the execution of works under paragraph (5) above exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertakers by virtue of paragraph (8) above shall be reduced by the amount of that excess; and
- (ii) if it involves cost in the execution of the Authorities' works exceeding that which would have been involved in that case, the undertakers shall pay to the Authorities an amount equal to that excess:

(8B) For the purposes of paragraph (8A) above—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or a manhole shall be treated as if it also had been agreed or had been so determined:

(8C) An amount which apart from this paragraph would be payable to the undertakers in respect of works by virtue of paragraph (8) above (and having regard, where relevant, to paragraph (8A) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the undertakers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992, and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time.”.

(13) In section 70 (Appointment and powers of joint committee) of the Act of 1957 there are hereby inserted—

- (a) in subsection (1)(a) after the words “of this Act” the words “and under the Act of 1998”;
- (b) in subsection (1)(b) after the words “all the powers of this Act” the words “and of the Act of 1998”;

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- (c) in subsection(1)(b)(iii) after the words “of this Act” the words “and those contained in Part IV (Finance) of the Act of 1998”;
- (d) after subsection (5) the following subsection:—
  - “(5A) (a) If a member appointed to the joint committee is not present at a meeting of the joint committee, and prior to the start of that meeting he has nominated a substitute member for that meeting in accordance with paragraph (b) below, the substitute member may attend and vote at that meeting in his place as if the substitute member were the member appointed to the joint committee.
  - (b) A nomination of a substitute member shall be made—
    - (i) from the members of the relevant authority who are not appointed to the joint committee; and
    - (ii) to the clerk of the joint committee.
  - (c) For the purposes of this subsection “the relevant authority” means such one of the Authorities as appointed the member who is making the nomination.”.
- (14) In section 72 (Bridge to be exempt from rates) of the Act of 1957 for the words “local rate” there are hereby substituted the words “non-domestic rate”.
- (15) In section 73 (Settlement of questions between Authorities) of the Act of 1957 after the words “of this Act” there are hereby inserted the words “or the Act of 1998”.
- (16) In section 78 (Application of general provisions of Act of 1936) of the Act of 1957 for the words “a reference to this Act” there are hereby substituted the words “references to this Act and the Act of 1998”.

### **35 For protection of Environment Agency**

The following provisions of this section shall, unless otherwise agreed in writing between the Authorities and the Agency, have effect:—

- (1) In this section—
  - “the Agency” means the Environment Agency;
  - “construction” includes execution, placing, altering, replacing, relaying and, in relation to temporary works, removal;
  - “drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for defence against water;
  - “plans” includes sections, drawings, specifications and method statements;
  - “relevant work” means so much of any permanent or temporary work or operation authorised by this Act (other than works required in an emergency) as is likely to—
    - (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work; or
    - (b) affect the purity or quality of water in any watercourse;
  - “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer;



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- (2)
  - (a) Before beginning to construct any relevant work, the Authorities shall submit to the Agency plans of the work and such further particulars available to them as the Agency may within 14 days of the submission of the plans reasonably require;
  - (b) Any such relevant work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph (14) below;
  - (c) Any approval of the Agency required under this paragraph—
    - (i) shall not be unreasonably withheld;
    - (ii) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of the plans for approval; and
    - (iii) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or pollution:
- (3) The requirements which the Agency may make under paragraph (2) above include conditions requiring the Authorities at their own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—
  - (a) to safeguard any drainage work against damage; or
  - (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any relevant work:
- (4) Any relevant work, and all protective works required by the Agency under paragraph (2) above, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works:
- (5) The Authorities shall give to the Agency not less than 14 days' notice in writing of their intention to commence construction of any relevant work and notice in writing of its completion not later than 7 days after the date on which it is brought into use:
- (6)
  - (a) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this section, the Agency may by notice in writing require the Authorities at the Authorities' own expense to comply with the requirements of this section or (if the Authorities so elect and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires;
  - (b) Subject to sub-paragraph (c) below, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (a) above is served upon the Authorities, they have failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Authorities;
  - (c) In the event of any dispute as to whether sub-paragraph (a) above is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (b) above until the dispute has been finally determined:

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- (7) (a) Any work constructed under this Act for the purpose of providing a flood defence shall be maintained to the reasonable satisfaction of the Agency by the person who has control of the work;
- (b) If any such work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require that person to repair and restore the work, or any part thereof, or (if the person having control of the work so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires;
- (c) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (b) above on the person who has control of that work, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover an expenditure reasonably incurred by it in so doing from that person;
- (d) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (b) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers of sub-paragraph (c) above until the dispute has been finally determined:
- (8) If by reason of the construction of any relevant work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, so as to require remedial action, such impairment or damage shall be made good by the Authorities to the reasonable satisfaction of the Agency and if the Authorities fail to do so, the Agency may make good the same and recover from the Authorities the expense reasonable incurred by it in so doing:
- (9) The Authorities shall indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—
- (a) in the examination or approval of plans under this section;
- (b) in the inspection of the construction of the relevant works or any protective works required by the Agency under this section:
- (10) (a) The Authorities shall indemnify the Agency from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from the Agency by reason of—
- (i) any damage to any drainage work so as to impair its efficiency for flood defence purposes;
- (ii) any raising or lowering of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
- (iii) any flooding or increased flooding of any such lands;
- which is caused by the construction of any relevant work or any act or omission of the Authorities, their contractors, agents or employees whilst engaged upon the work;
- (b) The Agency shall give to the Authorities reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the Authorities:

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- (11) Nothing in paragraph (10) above shall require the Authorities to indemnify the Agency in respect of any claim, demand, proceedings or damages which the Agency could reasonably make, take against or recover from any other person:
- (12) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Authorities from any liability under the provisions of this section:
- Provided that this paragraph shall not apply to the extent that such liability arises from a failure by the Agency properly to perform its functions:
- (13) For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under watercourses) as applying to the construction of the works, any consent or approval given or deemed to be given by the Agency under this section with respect to such construction shall be deemed also to constitute a consent or approval under that section:
- (14) Any dispute arising between the Authorities and the Agency under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

### **36 For protection of Railtrack**

For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the Authorities and Railtrack PLC, have effect:—

- (1) In this section—

“associated company of Railtrack PLC” means any company which is (within the meaning of section 736 of the Companies Act 1985) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer to be appointed by Railtrack PLC;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction), staging proposals and programmes;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes;

“railway property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

“the relevant works” means so much of the works, and, unless the context otherwise requires, so much of the bridge, as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property, and includes the maintenance, alteration, reconstruction and removal of such parts of such works and such part of the bridge:

- (2) (a) The Authorities shall not under the powers of this Act acquire compulsorily any railway property but they may, with the consent of Railtrack PLC, which consent shall not be unreasonably withheld but may be given subject to

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- reasonable conditions, acquire such easements or other rights over or use such railway property as they may reasonably require;
- (b) The Authorities shall fence off on a temporary or permanent basis the relevant works from any railway of Railtrack to the reasonable satisfaction of the engineer where so required by him:
- (3) The Authorities shall not exercise the powers of section 11 (3) of the Act of 1965 in respect of any railway property except with the consent of Railtrack PLC which consent shall not be unreasonably withheld but may be given subject to reasonable conditions:
- (4) (a) Except with the consent of Railtrack PLC the Authorities shall not in the exercise of the powers of this Act prevent pedestrian or vehicular access to any railway property;
- (b) The provisions of section 8 (Private rights of way) of this Act shall not apply to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack PLC;
- (c) The consent of Railtrack PLC under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions:
- (5) The Authorities shall not in exercise of the powers of this Act to improve, alter, extend, renew, reconstruct or replace the bridge or any part thereof deviate laterally southwards from the line of the specified work shown on the deposited plan so that there shall be a distance of less than 50 metres between the respective centre lines along the length of the bridge and of Railtrack's Royal Albert Bridge:
- (6) The Authorities shall not in exercising any of the powers of this Act in relation to the easternmost abutment or anchorage of the works alter the footings thereof so that they are situate within a distance of less than three metres from the nearest rail of Railtrack's St. Budeaux Junction to Bere Alston and Gunnislake railway:
- (7) The Authorities shall before commencing construction of the relevant works supply to Railtrack PLC proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the relevant works until plans thereof have been approved in writing by the engineer or settled by arbitration:
- Provided that the approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to Railtrack PLC the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:
- (8) 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 the commencement of the relevant works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the relevant works) and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the Authorities, if Railtrack PLC so desires, with all reasonable dispatch and the Authorities shall not commence the construction of the relevant works until the engineer has notified the Authorities that the protective works have been completed to his reasonable satisfaction:

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- (9) Blasting operations in connection with the works shall not be carried out except at such times and in such manner as the engineer may approve, which approval shall not be unreasonably withheld:
- (10) (a) The relevant works shall, when commenced, be constructed—
- (i) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
  - (ii) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
  - (iii) in such manner as to cause as little damage to railway property as may be; and
  - (iv) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack or the traffic thereon, the operation of any railway station and the use by passengers of railway property;
- and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the relevant works, the Authorities shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which Railtrack may sustain by reason of any such damage, interference or obstruction;
- (b) Nothing in this paragraph shall impose any liability on the Authorities with respect to any damage, cost, expense or loss which is attributable to the neglect or default of Railtrack or its servants or agents:
- (11) The Authorities shall—
- (a) at all times afford reasonable facilities to the engineer for access to the relevant works during their construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to the relevant works or the method of construction thereof:
- (12) Railtrack shall at all times afford reasonable facilities to the Authorities and their agents for access to any works carried out by Railtrack under this section during their construction and shall supply the Authorities with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (13) (a) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the relevant works or during a period of 12 months after the completion thereof in consequence of the construction of the relevant works, and Railtrack PLC gives to the Authorities reasonable notice of Railtrack's intention to carry out such alterations or additions, specifying the alterations or additions to be carried out, the Authorities shall pay to Railtrack PLC the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions;
- (b) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph (14) (a) below, provide such details of the formula by which those sums have been calculated as the Authorities may reasonably require;

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- (c) 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 Authorities to Railtrack PLC under this paragraph:
- (14) The Authorities shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—
- (a) in constructing any protective works under the provisions of paragraph (8) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be reasonably practicable interference, obstruction, danger or accident arising from the construction, maintenance, or failure of the relevant works;
  - (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, or failure of the relevant works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be reasonably necessary for the same reason;
  - (d) in respect of any additional temporary lighting of railway property in the vicinity of the relevant works being lighting made reasonably necessary as a result of the relevant works or the failure thereof;
  - (e) in respect of the approval by the engineer of plans submitted by the Authorities and the supervision by him of the construction of the relevant works:
- (15) If at any time after the completion of the relevant works Railtrack PLC gives notice to the Authorities informing them that the state of maintenance of the relevant works appears to be such as adversely affects the operation of railway property, the Authorities shall, on receipt of such notice, take such steps as may be reasonably necessary to put the relevant works in such state of maintenance as not adversely to affect railway property:
- (16) All temporary structures, erections, works, apparatus and appliances erected or placed by the Authorities under the powers of this Act or the Act of 1957 upon, over or under any railway of Railtrack shall, as soon as reasonably practicable, be removed by the Authorities at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with or delay or interruption to, the traffic on the railways of Railtrack as may be; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the Authorities shall forthwith make good such damage and pay to Railtrack PLC the reasonable costs and expenses to which Railtrack may be put and reasonable compensation for any loss which Railtrack may sustain by reason of such damage, interference, delay and interruption:
- (17) Before providing any illumination or illuminated traffic sign on or in connection with the relevant works the Authorities shall consult with Railtrack PLC and comply, save as otherwise directed by the Secretary of State or the Corporation of Trinity House of Deptford Strond, with its reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light for controlling, directing or securing the safety of traffic on the railway:

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- (18) Any additional expenses which Railtrack may reasonably incur after giving 56 days' notice to the Authorities in altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act by reason of the existence of the relevant works shall be repaid by the Authorities to Railtrack PLC:
- (19) (a) The Authorities shall be responsible for and make good to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, Railtrack—
- (i) by reason of the construction or maintenance of the relevant works or the failure thereof; or
  - (ii) by reason of any act or omission of the Authorities or of any person in their employ or of their contractors or others whilst engaged upon the relevant works;
- and the Authorities shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the relevant works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done 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 Railtrack or of any person in its employ or of its contractors or agents) excuse the Authorities from any liability under the provisions of this paragraph;
- (b) Any liability of the Authorities under this paragraph shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the neglect or default of Railtrack or of any person in its employ, or of its contractors or agents;
  - (c) Railtrack PLC shall give to the Authorities reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Authorities:
- (20) (a) The compensation payable under paragraph (19) above shall include a sum equivalent to the relevant costs;
- (b) Subject to the terms of any agreement made between Railtrack and the relevant train operators regarding the terms of payment of the relevant costs in respect of that train operator, Railtrack shall promptly pay to each train operator the amount of any compensation which Railtrack PLC receives under this paragraph which relates to the relevant costs of that train operator;
  - (c) In this paragraph “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of use of Railtrack’s railway network as a result of the construction or maintenance or failure of the relevant works or any such failure, act or omission as mentioned in paragraph (19) above;
  - (d) The obligation under this paragraph to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable direct by the train operators concerned:
- (21) In the assessment of compensation payable under this section there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and for the avoidance of doubt any reference

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in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this section:

- (22) The Authorities and Railtrack may enter into, and carry into effect, agreements for the transfer to the Authorities of—
  - (a) any railway property shown on the deposited plan and described in the book of reference;
  - (b) any lands, works or other property held in connection with any such railway property; and
  - (c) any rights and obligations (whether or not statutory) of Railtrack relating to any railway property:
- (23) Any difference arising between the Authorities and Railtrack under this section (other than a difference as to its meaning or construction) shall be determined by arbitration:
- (24) As between the Authorities and Railtrack, section 65 (For protection of British Railways Board) of the Act of 1957 shall cease to have effect.

### **37 For protection of tele-communications operators**

For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Authorities and the telecommunications operator concerned, have effect:—

- (1) In this section unless the contrary intention appears expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act and—
  - “apparatus” has the same meaning as in Part III of the Act of 1991; and
  - “relocation works” means works executed, or apparatus provided, under paragraph (5) below:
- (2) The temporary stopping up or diversion of any street under section 24 (Temporary interference with highways) of this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code (contained in Schedule 2 to the Telecommunications Act 1984) to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that street:
- (3) Where a street is stopped up or diverted under section 20 (Supplementary works powers) of this Act any telecommunications operator whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this section, as if this Act had not been passed:
- (4) The Authorities shall give not less than 28 days' notice in writing of their intention to stop up or divert any street under section 20 (Supplementary works powers) of this Act to any telecommunications operator whose apparatus is under, in, upon, over, along or across the street:
- (5) Where a notice under paragraph (4) above has been given, the telecommunications operator may, and if reasonably requested so to do by the Authorities in the notice, shall, as soon as reasonably practicable from the service of the notice—
  - (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the telecommunications operator may reasonably determine and have power to place it; or



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- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid:
- (6) Subject to the following provisions of this section, the Authorities shall pay to any telecommunications operator an amount equal to the cost reasonably incurred by the telecommunications operator in or in connection with—
- (a) the execution of relocation works required in consequence of the stopping up or diversion of the street; and
  - (b) the doing of any other work or thing rendered necessary by the execution of relocation works:
- (7) If in the course of the execution of relocation works under paragraph (5) above—
- (a) apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, or smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was;
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Authorities, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this section would be payable to the telecommunications operator by virtue of paragraph (6) above shall be reduced by the amount of that excess:
- (8) For the purposes of paragraph (7) above—
- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined:
- (9) An amount which apart from this paragraph would be payable to a telecommunications operator in respect of works by virtue of paragraph (6) above (and having regard, where relevant, to paragraph (7) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the telecommunications operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992, and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time:
- (10) Paragraphs (6) to (9) above shall not apply where—
- (a) the works constitute major bridge works for the purposes of Part III of the Act of 1991; or
  - (b) the works would if executed by the highway authority be major highway works within the definition of that Act;

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but instead—

- (i) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section; and
  - (ii) the allowable costs shall be borne by the Authorities and the telecommunications operator in such proportions as may be prescribed by any such regulations:
- (11) References in paragraph (10) above to section 85 of the Act of 1991 and regulations having effect thereunder are to that Act and any such regulations as having effect in accordance with section 3 (Application of the Act of 1991) of this Act.