

ELIZABETH II



1972 CHAPTER XXXV

An Act to empower the British Railways Board to construct a work and to acquire lands; to confer further powers on the Board; and for other purposes.

[27th July 1972]

WHEREAS by the Transport Act 1962 the British Railways Board (hereinafter referred to as "the Board") were established: 1962 c. 46.

And whereas it is the duty of the Board under the Transport Act 1962 (inter alia) to provide railway services in Great Britain and, in connection with the provision of railway services, to provide such other services and facilities as appear to the Board to be expedient, and to have due regard, as respects all those railway and other services and facilities, to efficiency, economy and safety of operation:

And whereas it is expedient that the Board should be empowered to construct the work authorised by this Act and to acquire the lands referred to in this Act:

And whereas it is expedient that the other powers in this Act contained should be conferred upon the Board and that the other provisions in this Act contained should be enacted:

And whereas plans and sections showing the lines or situation and levels of the work to be constructed under the powers of this Act, and plans of the lands authorised to be acquired or used by this Act, and a book of reference to such plans containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the said lands were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with the clerks of the county councils of the several counties within which the said work will be constructed or the said lands are situated, which plans, sections and book of reference are respectively referred to in this Act as the deposited plans, the deposited sections and the deposited book of reference:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

- Short title. 1. This Act may be cited as the British Railways Act 1972.
- Interpretation. 2.—(1) In this Act, unless there be something in the subject or context repugnant to such construction, the several words and expressions to which meanings are assigned by the Acts wholly or partly incorporated herewith have in relation to the relative subject-matter the same respective meanings and—
- 1845 c. 20. “ the Act of 1845 ” means the Railways Clauses Consolidation Act 1845;
- 1863 c. 92. “ the Act of 1863 ” means the Railways Clauses Act 1863;
- 1963 c. xviii. “ the Act of 1963 ” means the British Railways Act 1963;
- 1966 c. xvii. “ the Act of 1966 ” means the British Railways Act 1966;
- 1967 c. xxx. “ the Act of 1967 ” means the British Railways Act 1967;
- 1968 c. xxxiv. “ the Act of 1968 ” means the British Railways Act 1968;
- 1969 c. xliii. “ the Act of 1969 ” means the British Railways Act 1969;
- 1970 c. lxxv. “ the Act of 1970 ” means the British Railways Act 1970;
- 1971 c. xlv. “ the Act of 1971 ” means the British Railways Act 1971;
- “ the Board ” means the British Railways Board;

“ the creek ” means that part of the river Thames known as East Haven Creek, and includes the bed, banks and foreshores of the creek within the port authority’s jurisdiction;

“ enactment ” means any enactment, whether public general or local and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“ the limits of deviation ” means the limits of deviation shown on the deposited plans;

“ the port authority ” means the Port of London Authority;

“ telegraphic line ” has the same meaning as in the Telegraph Act 1878;

1878 c. 76.

“ the tribunal ” means the Lands Tribunal;

“ the works ” means the works authorised by Part II (Works) of this Act.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment, as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Act.

(3) All distances and lengths stated in any description of works, powers or lands shall be construed as if the words “ or thereabouts ” were inserted after each such distance and length and distances between points on a railway shall be taken to be measured along the railway.

(4) Unless the context otherwise requires, any reference in this Act to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act.

3. The following Acts and Parts of Acts, so far as the same are applicable for the purposes and are not inconsistent with or varied by the provisions of this Act, are incorporated with and form part of this Act, and this Act shall be deemed to be the special Act for the purposes of the said incorporated enactments:—

Incorporation
of general
Acts.

The Act of 1845, except sections 7, 8, 9, 17, 19, 20, 22 and 23 thereof, and Part I (relating to construction of a railway) of the Act of 1863, except sections 13, 14, 18 and 19 thereof:

Provided that—

(i) for the purposes of the provisions of the Act of 1845 and the Act of 1863, as incorporated with this Act, the expression “ the company ” where used in the said incorporated provisions means the Board;

(ii) the provisions of sections 18 and 21 of the Act of 1845, as incorporated with this Act, shall not extend to regulate the relations between the Board and any other person in respect of any matter or thing concerning which those

PART I
—cont.

1950 c. 39.

relations are regulated in any respect—

(a) by the provisions of Part II of the Public Utilities Street Works Act 1950;

(b) by the provisions of section 33 (For protection of gas, water and electricity undertakers) of the Act of 1963, as incorporated with this Act; or

(c) by the provisions of section 45 (For further protection of gas, water and electricity undertakers of the Act of 1967, as incorporated with this Act.

Application
of Part I of
Compulsory
Purchase Act
1965.

1965 c. 56.

4.—(1) Part I of the Compulsory Purchase Act 1965 (except sections 4, 24 (5) and 27 thereof and paragraph 3 (3) of Schedule 3 thereto), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 applies and as if this Act were a compulsory purchase order under the said Act of 1946.

(2) In section 11 (1) of the Compulsory Purchase Act 1965 (which empowers the acquiring authority to enter on and take possession of land the subject of a notice to treat after giving not less than fourteen days' notice), as so applied, for the words "fourteen days" there shall be substituted the words "three months".

1845 c. 18.

(3) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.

PART II

WORKS

Power to
make work.

5.—(1) Subject to the provisions of this Act, the Board may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the work hereinafter described with all necessary works and conveniences connected therewith:—

In the county of Essex—

Work No. 1 A railway (1 mile 835 yards in length) partly in the urban district of Basildon and partly in the urban district of Canvey Island commencing by a junction with the London and Southend railway at a point 60 yards east of the bridge carrying that railway over Church Road and terminating at National Grid reference point TQ 767852:

Provided that nothing in this subsection shall authorise the Board to execute, place or keep any permanent obstruction to navigation in the creek without the written consent of the port authority.

(2) Work No. 1 shall be so constructed as not to affect the flow of water in the creek either during or after the construction of that work.

(3) Nothing in this Act shall authorise the Board to construct Work No. 1 so that the centre span of the works carrying Work No. 1 over the creek has a width less than 40 feet, and a headway of less than 11 feet above the level of mean high-water springs.

(4) In the exercise of the powers conferred by this section the Board shall cause as little detriment and inconvenience as circumstances admit to any person, and subject to the provisions of this Act, any person who suffers loss by the exercise of powers conferred by this section may recover from the Board compensation for the damage, to be determined in case of dispute by the tribunal, and, so far as compensation is properly to be calculated by reference to the depreciation of the value of his interest in any land, rules 2 to 4 of the rules set out in section 5 of the Land Compensation Act 1961 shall apply.

1961 c. 33.

6.—(1) Subject to the provisions of this Act (and, in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels as shown) the Board may exercise the powers hereinafter mentioned, that is to say:—

(a) In the county of Kent—

In the borough of Gravesend—

stop up and discontinue so much of the road known as Mark Lane as crosses the railway between Gravesend and Higham stations by means of a level crossing known as Denton (Gravesend) level crossing as lies within the boundaries of their property;

(b) In the county of Essex—

(i) In the urban district of Canvey Island—

stop up and discontinue so much of the footpath as lies between the points marked "A" and "C" on the deposited plans and substitute therefor a new footpath between the points marked "A", "B" and "C" on the deposited plans;

(ii) In the urban district of Basildon—

stop up and discontinue so much of the footpath as lies between the points marked "D" and "G" on the deposited plans and substitute therefor a new footpath between the points marked "D", "E", "F" and "G" on the deposited plans.

(2) The stopping up under this section of the portion of Mark Lane in the borough of Gravesend shall not take place until there has been constructed and opened for public use—

(a) a new road to connect Norfolk Road with Mark Lane;
and

PART II
—cont.

(b) a pedestrian footbridge to connect the severed portions of Mark Lane.

As to certain
level crossings.

7.—(1) As from the passing of this Act, all rights of way over the level crossing referred to in Part I of Schedule 1 to this Act, other than a right for all persons to use the level crossing as a bridle way or on foot, shall be extinguished, and the Board shall provide and maintain on both sides of the railway at the said level crossing gates for the convenience of persons on horseback or leading horses and persons on foot.

(2) As from the passing of this Act, all rights of way over the level crossings referred to in Part II of the said schedule, other than a right for all persons to use those level crossings on foot, shall be extinguished, and the Board shall provide and maintain on both sides of the railway at each of the said level crossings wicket gates or stiles for the convenience of persons on foot.

1839 c. 45.
1842 c. 55.

(3) The provisions of the Highway (Railway Crossings) Act 1839, of section 9 of the Railway Regulation Act 1842, of section 47 of the Act of 1845 and of sections 5, 6 and 7 of the Act of 1863 and any other provisions to the same or similar effect incorporated with or contained in any enactment relating to any of the level crossings referred to in the said schedule shall cease to apply to those level crossings.

(4) As from the passing of this Act, each of the level crossings referred to in the said schedule (including the gates thereof, other than the gates provided in pursuance of subsections (1) and (2) of this section) shall be deemed to be works provided by the Board at the passing of this Act pursuant to section 68 of the Act of 1845 for the accommodation of the owners and occupiers of the lands adjoining the railway, and, for the purposes of this subsection, such owners and occupiers shall be deemed to include the owners and occupiers of any lands the use of which would have been interrupted if such level crossings had been closed at the passing of this Act.

(5) If any part of the road crossed by the railway at any of the level crossings referred to in the said schedule shall in consequence of the provisions of this section cease to be a road over which the public have a right of way for the passage of vehicles, the owners and occupiers of the lands abutting on such part shall be deemed to have such rights of passage thereover as shall be necessary to enable them to pass and repass to and from the said lands from and to such level crossing.

(6) The vehicular gates at the level crossing in the urban district of Bentley-with-Arksey known as Bentley Lane No. 262 crossing

may be kept permanently closed to road traffic between 22.00 hours and 06.00 hours, but at all other times the Board shall employ proper persons to open and shut the gates.

(7) At the level crossing in the parish of Great Barton in the rural district of Thingoe known as Cattishall No. 15 crossing the Board shall employ proper persons to open and shut the vehicular gates except when the said gates are permanently closed to road traffic.

(8) Any person who suffers loss by the extinguishment under this section of such private rights of way (if any) as may exist over the level crossings referred to in the said schedule shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

8. Subject to the provisions of this Act the following provisions of the under-mentioned Acts are incorporated with, and form part of this Part of, this Act:—

The Act of 1963—

- Section 5 (Power to deviate);
- Section 7 (Repair of roads where level not permanently altered);
- Section 11 (Stopping up roads and footpaths without providing substitute);
- Section 12 (Stopping up roads and footpaths in case of diversion or substitution);
- Section 13 (Provision as to repair of roads and footpaths);
- Section 14 (Power to make agreements with road authorities); and
- Section 17 (Use of sewers, etc., for removing water).

The Act of 1967—

- Section 12 (Temporary stoppage of roads and footpaths) except subsections (5) and (6) thereof.

The Act of 1968—

- Section 11 (Underpinning of houses near works):

Provided that—

- (i) the exercise by the Board of the powers of the said section 12 of the Act of 1967, as so incorporated, in relation to any road or footpath shall not prejudice or affect the right of the Post Office to maintain, inspect, repair, renew or remove telegraphic lines or break open that road or footpath for any of those purposes;
- (ii) the expression “river board” where used in the said section 17 of the Act of 1963, as so incorporated, shall mean a river authority established by an order under

Incorporation
of provisions
of Acts of
1963, 1967
and 1968
relating to
works.

PART II
—cont.
1963 c. 38.

Part II of the Water Resources Act 1963, and shall include the Conservators of the River Thames and the Lee Conservancy Catchment Board and the definition of “river board” in subsection (5) of the said section 17 shall be construed accordingly.

PART III

LANDS

Power to
acquire lands.

9.—(1) Subject to the provisions of this Act, the Board may enter upon, take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the works or for any purpose connected with or ancillary to their undertaking.

(2) Without prejudice to the generality of the powers conferred upon the Board by subsection (1) of this section, the Board may, subject to the provisions of this Act, enter upon, take and use for the purposes specified in column (3) of Schedule 2 to this Act all or any of the lands referred to in columns (1) and (2) of the said schedule.

(3) Subject to the provisions of this Act, the Board may enter upon, use and appropriate so much of the subsoil and under-surface of any public street, road, footway or place delineated on the deposited plans and described in the deposited book of reference as shall be necessary for the purposes mentioned in subsection (1) of this section without being required to purchase the same or any easement therein or thereunder or to make any payment therefor.

(4) The Board shall not under the powers of this section enter upon, take or use the lands delineated on the deposited plans and described in the deposited book of reference and therein numbered 11 to 31 in the urban district of Canvey Island or any part of those lands.

(5) Except with the consent of United Refineries Limited (in this subsection referred to as “the company”) the Board shall not under the powers of this Act acquire any lands in the urban district of Canvey Island which are owned by the company, or on which the company have an option or a right of first refusal, or acquire any easement or right in such lands.

Power to
acquire
easements
only in
certain cases.

10.—(1) Notwithstanding anything in this Act the Board may acquire such easements or rights as they may require for the purpose of constructing, maintaining, renewing and using the works, in, under or over—

(a) any railway, tramway, tramroad, river, canal, navigation, watercourse, aqueduct, drain, dyke or sewer; or

(b) the lands numbered on the deposited plans 1 in the urban district of Basildon within the line "Limit of easement to be acquired";

PART III
—cont.

without being obliged to acquire any greater interest in, under or over the same respectively, and may give notice to treat in respect of such easements or rights, describing the nature thereof and (subject to the foregoing provisions of this section and to the other provisions of this Act and except as otherwise provided in this Act) the provisions of Part I of the Compulsory Purchase Act 1965, as applied by this Act, shall have effect in relation to the acquisition of such easements or rights as if they were lands within the meaning of those provisions. 1965 c. 56.

(2) (a) If, in any case where the Board acquire an easement or right in or under any of the said lands, they also require to take, use and pull down or open any cellar, vault, arch or other construction forming part of any such lands, they may enter upon, take and use such cellar, vault, arch or other construction for the purposes of the works and (subject to the provisions of this Act) the provisions of the Compulsory Purchase Act 1965, as applied by this Act, shall extend and apply in relation to the purchase thereof as if such cellar, vault, arch or other construction were lands within the meaning of those provisions.

(b) Section 15 (Acquisition of part only of certain properties) of the Act of 1967, as incorporated with this Act, shall apply in respect of the acquisition by the Board under this subsection of any cellar, vault, arch or other construction as if the same were a part of land to which that section applies.

(3) Where the Board have acquired an easement or right under this section, the owner or occupier for the time being of the land affected shall, subject to the easement or right, have the same right to use the land as if this section had not been enacted.

11. The powers of the Board for the compulsory purchase of the lands and easements which they are authorised by this Act to acquire shall cease on 31st December, 1975. Period for compulsory purchase of lands and easements.

12. The following provisions of the under-mentioned Acts are incorporated with, and form part of this Part of, this Act:—
Incorporation of provisions of Acts of 1963, 1967 and 1969 relating to lands.

The Act of 1963—

Section 19 (Correction of errors in deposited plans and book of reference); and

Section 28 (As to cellars under streets not referenced).

The Act of 1967—

Section 15 (Acquisition of part only of certain properties); and

Section 16 (Grant of easements by persons under disability).

PART III
—cont.

The Act of 1969—

Section 12 (Disregard of recent improvements and interests); and

Section 13 (Extinction of private rights of way).

PART IV

PROTECTIVE PROVISIONS

Incorporation of provisions of Acts of 1963 and 1967.

13. The following provisions of the under-mentioned Acts are incorporated with, and form part of this Part of, this Act:—

The Act of 1963—

Section 33 (For protection of gas, water and electricity undertakers).

The Act of 1967—

Section 45 (For further protection of certain gas, water and electricity undertakers):

Provided that in the said section 45 of the Act of 1967, as so incorporated—

- (a) the reference in paragraph (2) thereof to section 11 (Underpinning of houses near works) of the Act of 1967 shall be construed as a reference to section 11 (Underpinning of houses near works) of the Act of 1968, as incorporated with this Act; and
- (b) for the reference in paragraph (4) thereof to section 13 (Incorporation of provisions of Act of 1963 relating to works) of the Act of 1967 there shall be substituted a reference to section 8 (Incorporation of provisions of Acts of 1963, 1967 and 1968 relating to works) of this Act.

For protection of Essex County Council.

14. For the protection of the council of the administrative county of Essex (in this section referred to as “the council”) the following provisions shall, unless otherwise agreed in writing between the Board and the council, apply and have effect:—

- (1) In this section, unless the context otherwise requires—

“plans” includes sections, drawings and specifications;

“protected property” means any land acquired by the council for the purpose of the works authorised by Part III (Works) of the Essex County Council (Canvey Island Approaches, etc.) Act 1967 and any of those works and shall include any land which the council specify within twenty-eight days of the receipt of the

plans and soil survey furnished under paragraph (4) of this section as required for the said works and authorised to be acquired by the said Act;

PART IV
—cont.

“ the specified works ” means Work No. 1 and any works and conveniences in connection therewith constructed under the powers of this Act or any other enactment;

“ the surveyor ” means the county surveyor of the council:

(2) The Board shall not without the consent of the council acquire any of the protected property:

(3) The Board shall not construct that part of Work No. 1 shown on Sheet No. 2 of the deposited plans unless it is required in connection with an oil refinery on Canvey Island for which planning permission has been granted under the Town and Country Planning Act 1971:

1971 c. 78.

(4) The Board shall, before commencing the construction, reconstruction or alteration of any part of the specified works, furnish to the surveyor proper and sufficient plans and soil survey thereof for the reasonable approval of the surveyor and shall not commence the construction, reconstruction or alteration of any part of the specified works until plans thereof have been approved in writing by the surveyor or settled by arbitration:

Provided that if within twenty-eight days after such plans have been furnished to the surveyor the surveyor shall not have intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:

(5) (a) Upon signifying his approval or disapproval of the plans the surveyor may specify any protective works, whether temporary or permanent, which should be carried out before the commencement of the construction, reconstruction or alteration of any part of the specified works to ensure the safety or stability of the protected property or to protect it from injury and such protective works shall be constructed by the Board under the superintendence and to the reasonable satisfaction of the surveyor and the Board shall acquire any land or rights or interest in land necessary for the purpose;

(b) The Board shall not commence the construction, reconstruction or alteration of the specified works until the protective works have been completed to the reasonable satisfaction of the surveyor;

PART IV
—cont.

- (c) The Board shall repay to the council in respect of the protective works a capitalised sum representing the cost of maintaining and renewing such works:
- (6) The Board shall give to the surveyor twenty-eight days' notice of their intention to commence the construction, reconstruction or alteration of any of the specified works and except in emergency (when they shall give such notice as may be reasonably practicable) also of their intention to carry out any works for the repair or maintenance of the specified works:
- (7) The specified works shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and under the supervision (if given) and to the reasonable satisfaction of the surveyor and in such manner as to cause as little damage to the protected property as may be and if any damage to the protected property shall be caused or take place the Board shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the council all reasonable expenses to which they may be put and reasonable compensation for any loss which they may sustain by reason of any such damage:

Provided that nothing in this paragraph shall impose any liability on the Board with respect to any damage, costs, expenses or loss which is attributable to the act, neglect or default of the council or their servants or agents:

- (8) The Board shall at all times afford reasonable facilities to the surveyor for access to the specified works during their construction, reconstruction or alteration and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction, reconstruction or alteration thereof:
- (9) (a) If any alterations or additions, either permanent or temporary, to the protected property shall be reasonably necessary in consequence of the construction of the specified works such alterations and additions shall be effected by the Board at their expense after twenty-eight days' notice (except in case of emergency) has been given to the Board by the council and if the Board fail to do so the council may effect such alterations and additions in or upon the lands of the council or of the Board and the Board shall pay to the council on demand the reasonable cost thereof;

- (b) The Board shall pay to the council in respect of permanent alterations and additions to the protected property a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:

Provided that if the cost of maintaining or renewing the protected property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving may be set off against any sum payable by the Board to the council under this section:

- (10) The Board shall repay to the council all costs, charges and expenses reasonably incurred by the council in respect of the supervision by the surveyor of the specified works or of any protective works:
- (11) If at any time after the completion of the specified works the council shall give notice to the Board informing them that the state of repair of the specified works appears to be such as to affect prejudicially the protected property, the Board shall, within twenty-eight days of the receipt of such notice, take such steps (if any) as may be reasonably necessary to put the specified works in such state of repair as not to affect prejudicially the protected property and, if and whenever the Board fail to do so, the council may make and do in and upon the lands of the council or of the Board all such works and things as shall be requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the council in so doing shall be repaid to them by the Board:
- (12) The Board shall be responsible for and make good to the council all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the council—

(a) by reason of the specified works or the failure thereof; or

(b) by reason of any act or omission of the Board or of any person in their employ or of their contractors or others whilst engaged upon the specified works;

and the Board shall effectively indemnify and hold harmless the council from and against all claims and demands arising out of or in connection with the construction, reconstruction, alteration or maintenance 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 council on behalf of the Board or in

PART IV
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accordance with plans approved by the surveyor or in accordance with any requirement of the surveyor or under his supervision shall not (if it was done without negligence on the part of the council or of any person in their employ or of their contractors or agents) excuse the Board from any liability under the provisions of this section:

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

- (13) (a) The specified works (including any siding constructed as part of the specified works) shall not be used otherwise than for the loading of oil and other products of an oil refinery on Canvey Island into trains by means of a pipeline or for carrying such oil or products except with the consent of the council and, failing such consent, the matter shall be determined by the Secretary of State for the Environment;
- (b) There shall be no loading of any train on the specified works (including any such siding) between the hours of 10 p.m. and 6 a.m.;
- (c) In paragraph (b) of this paragraph “the specified works” means that part of the specified works which is shown on Sheet No. 1 of the deposited plans and “loading” shall not include train movements:
- (14) Before the construction, reconstruction or alteration of any part of the specified works there shall be submitted to the council details of schemes to provide for—
- (a) the layout, landscaping (including screen fencing) and external appearance of any buildings and structures;
- (b) adequate means of access for the fire brigade, the supply of water for extinguishing any fire which may break out in connection with the specified works, the equipment for fighting any such fire (including the provision of automatic fire protection equipment) and the safeguards to be taken to prevent the outbreak of fire;
- and the specified works shall not be brought into use before such schemes have been approved by the council or, failing such approval, have been determined in the case of a scheme under sub-paragraph (a) of this paragraph by the Secretary of State for the Environment and in the case of a scheme under sub-paragraph (b) by the Secretary of State for the Home Department:

- (15) Any difference arising between the Board and the council under this section (other than a difference as to the meaning or construction of this section or a difference under sub-paragraph (a) of paragraph (13) or paragraph (14) of this section) shall be referred to and settled by arbitration.

PART IV
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15. For the protection of the port authority and users of the creek the following provisions shall, unless otherwise agreed in writing between the Board and the port authority, apply and have effect:—

For protection of port authority and users of the creek.

- (1) In this and the next following section “river work” means any works constructed or work carried out in, on, over or under the creek by the Board under the powers of this Act and a reference to the creek shall, unless the context otherwise requires, be construed as a reference to the creek or any part of the creek:
- (2) The Board shall not under the powers of this Act acquire compulsorily any part of the creek but they may, in accordance with the provisions of section 10 (Power to acquire easements only in certain cases) of this Act, acquire compulsorily such easements and rights as they require for the purposes of any river work in, on, over or under so much of the creek as is within the limits of the lands delineated on the deposited plans:
- (3) (a) Not less than twenty-eight days before commencing any river work the Board shall submit to the port authority plans, sections and particulars of the river work, and the port authority may impose on the Board reasonable conditions for the protection of navigation and users of the creek, and for the conservancy of the creek, in relation to the carrying out of that river work;
- (b) The Board shall at their own cost comply with any condition imposed by the port authority under this paragraph, notice of which is received by the Board within twenty-eight days of the submission to the port authority under this paragraph of the plans, sections or particulars of the river work in question;
- (c) A river work of which plans, sections and particulars are submitted to the port authority under this paragraph shall be subject to section 76 (Works to be approved by Board of Trade) of the Port of London Act 1968:
- (4) (a) A river work when commenced shall be completed as soon as practicable and the Board shall upon completion of any part of any permanent river work remove

1968 c. xxxii.

PART IV
—cont.

- as soon as practicable any temporary works and materials for temporary works constructed or placed in, on, over or under the creek in connection with that part of the river work;
- (b) A river work shall be constructed and maintained and in the case of temporary works removed to the reasonable satisfaction of the director of engineering of the port authority and in the construction, maintenance and removal of a river work traffic on the creek shall not be interfered with more than may be reasonably necessary:
- (5) The Board shall allow the port authority's representatives to inspect and survey from time to time river works and other works constructed under the powers of this Act on lands immediately adjacent to the creek and shall give reasonable facilities for that purpose:
- (6) Nothing in this or any other Act shall authorise the Board without the consent in writing of the port authority to reduce permanently the width of or the headway under the centre span of the works carrying Work No. 1 over the creek below the minimum measurements specified in subsection (3) of section 5 (Power to make work) of this Act:
- (7) Except in cases of emergency and except for such accidental deposits as may be unavoidable in the construction of the works the Board shall not, without the consent of the port authority under the hand of their secretary, which consent shall not be unreasonably withheld, take from or deposit in or allow to fall into the creek any gravel, soil, silt or other material:
- (8) (a) Any pile stump or other obstruction which becomes exposed in consequence of a river work shall be removed from the creek by the Board or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the creek as the port authority may reasonably direct;
- (b) If the Board fail to remove from the creek any such pile stump or other obstruction within twenty-eight days after receipt of written notice from the port authority requiring the removal the port authority may carry out the removal and recover from the Board the cost to the port authority of such removal:
- (9) If—
- (i) any work constructed under the powers of this Act is abandoned or out of repair and is either wholly

or partially in the creek below the level of mean high-water springs or is in such other position that it is or is likely to become a danger to or interfere with navigation or other public rights in the creek; and

(ii) the port authority by written notice require the Board either to repair the work or (if the Board no longer require the work) to abate and remove the work or any part of it and restore the site to its former condition; and

(iii) the Board fail to comply with the notice within twenty-eight days after the receipt of it;

the port authority may abate and remove the work or any part of it and restore the site to its former condition and may recover from the Board the cost to the port authority of so doing:

(10) The port authority may recover from the Board the cost to the port authority of—

(i) dredging away or removing any accumulation of mud or silt; or

(ii) obtaining or depositing materials in the creek so as to make good any scouring, disturbance or collapse of the creek;

when those operations are carried out because in the opinion of the port authority they are necessary—

(A) in the interests of users of the creek, or for the safety of navigation or the conservancy of the creek; and

(B) directly or indirectly as a result of any river work:

(11) Without prejudice to the generality of paragraph (10) of this section—

(a) if the port authority make a survey of the creek before the construction of a river work, the Board shall pay the cost of any such survey which is related to the purposes of the river work, and the Board shall be supplied with a copy of the results of such survey;

(b) if at any time within five years of the construction and completion of a river work the port authority are of the opinion that siltation, scouring, disturbance or collapse of the creek has occurred, or is occurring, as a result directly or indirectly of the construction or use of a river work within any area so surveyed,

PART IV
—cont.

the port authority shall give at least seven days' notice in writing to the Board of their intention to carry out a further survey of the creek in the area of the siltation, scouring, disturbance or collapse and shall supply a copy of the results of such survey to the Board;

(c) if on comparison of such survey with any survey before the construction of the river work, and with such further data as may from time to time be made available, the port authority are of the opinion that siltation, scouring, disturbance or collapse has so occurred, or is so occurring and ought to be removed or, as the case may be, made good, the Board shall pay to the port authority the cost of removing the siltation or of making good the scouring, disturbance or collapse and also the cost of such further survey;

(d) should such siltation, scouring, disturbance or collapse arise within the said period of five years and be removed or made good by the port authority then the obligations of the Board under this paragraph of this section shall be extended as if for the said period of five years there were substituted a period of ten years:

- (12) If, in the opinion of the port authority, it is necessary or desirable as a result directly or indirectly of a river work, to alter, remove, re-site or reinstate any existing moorings, or lay down and maintain or remove any new moorings, the port authority may recover from the Board the cost to the port authority of carrying out those operations:
- (13) The compensation or consideration payable to the port authority by the Board in respect of any easement or right acquired by the Board under this Act and of any river work shall be agreed or assessed in accordance with the provisions of section 67 (Consideration for licence) of the Port of London Act 1968 and the port authority may recover from the Board their expenses so incurred:
- (14) On completion of the construction of the works, the Board shall supply to the port authority a plan on a scale of not less than 1/2500 and sections and cross-sections on scales of not less than 1 inch to 8 feet showing the situation and levels of Work No. 1 where it passes over the creek and of every other permanent river work constructed under the powers of this Act:

(15) The owners, masters and charterers of vessels shall not be liable to make good any damage which may be caused to any temporary river work or plant placed by the Board in the creek under the powers of this Act except to the extent that any such damage arises from the wilful act or default of such owners, masters or charterers or their servants or agents:

(16) Notwithstanding anything in the Port of London Acts 1968 and 1970 the port authority shall not be liable in the absence of negligence for any damage to a river work resulting from the dredging operations of the port authority or the carrying out by them in the execution of their statutory powers and duties of any operations in the creek or any works for its improvement or maintenance:

(17) Except as expressly provided by this Act, nothing in this Act shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the port authority or alter or diminish any power, authority or jurisdiction vested in the port authority at the commencement of this Act:

(18) Nothing in this Act shall authorise the Board to discharge or allow to escape directly or indirectly into the creek any offensive or injurious matter in suspension or otherwise or shall affect the operation of any provision of the Port of London Acts 1968 and 1970 relating to pollution:

(19) Any difference arising between the Board and the port authority under this section (other than a difference as to the meaning or construction of this section and other than under paragraphs (13), (16) and (18)) shall be settled by arbitration.

16.—(1) The Board shall at or near every river work exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the port authority may from time to time direct and in the case of injury to or destruction or decay of a river work, or any part thereof, the Board shall immediately notify the port authority and shall apply to the port authority for directions about the means to be taken.

Marking of
works in
the creek.

(2) If the Board fail to comply with any provision of this section they shall be liable on summary conviction to a fine not exceeding one hundred pounds and on conviction on indictment to a fine.

PART IV
—cont.

For protection
of Essex River
Authority.

17. For the protection of the Essex River Authority the following provisions shall, unless otherwise agreed in writing between the Board and the river authority, apply and have effect:—

(1) In this section—

“ authorised work ” means so much of Work No. 1 or any work (whether temporary or permanent) forming part of or constructed in connection with the said work under the powers of this Act (including either of the substituted footpaths under section 6 (Further works and powers) of this Act) as will or may interfere with or affect (either directly or indirectly) the protected area or a watercourse and includes the maintenance or renewal of any authorised work;

“ banks ” has the meaning assigned to that expression by the Land Drainage Act 1930;

“ construction ” includes execution, placing and altering and in relation to temporary works also includes removal and “ construct ” and “ constructed ” have corresponding meanings;

“ existing ” means existing at the passing of this Act;

“ plans ” includes sections, particulars and descriptions (including descriptions of the method of construction);

“ the protected area ” means the area coloured green on the signed plan;

“ the river authority ” means the Essex River Authority;

“ sea defence wall ” means so much of the sea defence wall on either bank of East Haven Creek as is for the time being under the jurisdiction of the river authority;

“ the signed plan ” means the plan signed in duplicate by Peter Brian Davis on behalf of the Board and by Leslie John Carey on behalf of the river authority;

“ watercourse ” includes a main river and any other river and any stream, ditch, drain, cut, culvert, dyke, sluice, sewer (other than a public sewer within the meaning of the Public Health Act 1936) or passage through which water flows and the banks thereof:

(2) No authorised work shall be constructed so as—

(a) to damage or otherwise impair the efficiency of a sea defence wall; or

1930 c. 44.

1936 c. 49.

(b) to prejudice or prevent the strengthening or improving of a sea defence wall by the river authority; or

(c) to diminish the width between the banks of any watercourse except with the consent of the river authority but such consent shall not be unreasonably withheld;

and, in particular but without prejudice to the generality of the foregoing, no work shall be constructed and no excavation shall be made within so much of the limits of deviation of Work No. 1 as is coloured red on the signed plan:

- (3) Any part of Work No. 1 constructed on, in or over the protected area shall be so maintained by the Board that the sea defence wall in that area after such construction is not less effective as a sea defence wall than it was before the said part was constructed:
- (4) Not less than twenty-eight days before commencing an authorised work the Board shall, subject as hereinafter in this paragraph provided, submit plans of such work to the river authority at their head office for their reasonable approval:

Provided that if the river authority do not within twenty-eight days after the receipt of any such plans signify to the Board their approval or disapproval thereof they shall be deemed to have approved thereof:

- (5) (a) An authorised work shall not be constructed except in accordance with such plans as may be approved or be deemed to be approved by the river authority as aforesaid or settled by arbitration, subject however to any modification of those plans from time to time agreed upon between the engineer of the Board and the engineer of the river authority and shall be constructed to the reasonable satisfaction of the engineer of the river authority who shall be given reasonable notice of the date and time on and at which the authorised work is to be commenced;
- (b) The Board shall at all reasonable times afford to the engineer of the river authority and his duly authorised representatives access to such authorised work for the purpose of inspection and shall comply with any reasonable directions given by such engineer:
- (6) If there shall be any inconsistency between any plans approved or deemed to be approved by the river

PART IV
—cont.

1968 c. xxxii.

authority or settled by arbitration under the provisions of this section and the plans approved by the Secretary of State for Trade and Industry under section 76 (Works to be approved by Board of Trade) of the Port of London Act 1968, the authorised work shall be constructed in accordance with the plans approved by the Secretary of State for Trade and Industry:

(7) If by reason of the construction, maintenance or renewal of any authorised work or if by reason of the failure of that work or of the Board to maintain as an efficient barrier against inundation by the sea any authorised work which when constructed constitutes such a barrier a sea defence wall shall be breached or (as the case may be) shall at any time be injured or damaged or its efficiency as a sea defence wall is otherwise impaired the river authority may fill in the breach or (as the case may be) make good such injury or damage and in either such a case restore it to a proper standard of efficiency as a sea defence wall and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the river authority) from the Board:

(8) If at any time after the construction of Work No. 1 the river authority raise the height of or otherwise strengthen or improve a sea defence wall adjoining any part of that work the Board shall to the reasonable satisfaction of the river authority carry out such works in relation to Work No. 1 as are agreed with the river authority or, in default of agreement, settled by arbitration to be reasonably necessary to make it conform with the adjacent parts of the sea defence wall as so raised in height, strengthened or improved:

Provided that so much of the cost reasonably incurred by the Board in carrying out such works (including a proper proportion of the overhead charges of the Board) as would have had to be incurred by the river authority if Work No. 1 had not been constructed shall be repaid by the river authority to the Board on demand:

(9) The Board shall indemnify and hold harmless the river authority from all claims, demands, costs, expenses, damages or loss which may be made on or against them or which they may incur or have to pay or which they may sustain in consequence of the construction, maintenance or renewal of an authorised work or of the failure or want of repair thereof or any subsidence caused by the construction thereof or in consequence of

any act or omission of the Board, their contractors, agents, workmen or servants, whilst engaged upon the authorised work:

PART IV
—cont.

Provided that—

(a) the river authority shall give to the Board reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the Board; and

(b) nothing in this paragraph shall impose any liability on the Board with respect to any claim, demand, costs, expenses, damage or loss which is attributable to the act, neglect or default of the river authority or their servants or agents:

- (10) The fact that any work or thing has been executed or done in accordance with a plan approved or not objected to by the river authority or to their satisfaction or in accordance with any directions or award of an arbitrator shall not relieve the Board from any liability under the provisions of this section:
- (11) The Board shall at all times and for all purposes allow the river authority, their servants and contractors (with or without vehicles and equipment) a right of passage over so much of the protected area as the Board shall acquire for the purpose of the authorised work and as lies on the landward side of a sea defence wall through openings each having a clear headway of not less than 14 feet and a width of not less than 25 feet:
- (12) Any difference arising between the Board and the river authority under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

PART V

MISCELLANEOUS

18. Section 17 (Enforcement of byelaws) of the Act of 1970 shall have effect as if in paragraph (a) of the said section the words “for the safety and security of the railway, the preservation of good order or the comfort and convenience of persons upon the railway” were omitted therefrom. Amendment of section 17 of Act of 1970.

19. The proviso to subsection (1) of section 3 (Rules of Fund) of the Southern Railway (Superannuation Fund) Act 1927 is hereby repealed. Repeal. 1927 c. xi.

PART V
—cont.
Amendment
of Act of
1971.

20. The Act of 1971 shall have effect as if the following section were substituted for section 30 (For protection of Harwich Harbour Conservancy Board and Felixstowe Dock and Railway Company) thereof:—

“ For protec-
tion of
Harwich
Harbour
Conservancy
Board and
Felixstowe
Dock and
Railway
Company.

30. For the protection of the Harwich Harbour Conservancy Board and the Felixstowe Dock and Railway Company the following provisions shall, unless otherwise agreed in writing between the Board and the said conservancy board and company, apply and have effect:—

(1) In this section—

‘ the protected area ’ means the river Stour to eastward of the west boundary of Parkeston Anchorage and to westward of the Guard Buoy and the area within the limits of Felixstowe Dock with the navigational approaches thereto;

‘ the protected interests ’ means the Harwich Harbour Conservancy Board and the Felixstowe Dock and Railway Company and includes each of them.

(2) (a) If, during the construction of the Parkeston works on the foreshore or bed of the river Stour or of any temporary structures in connection therewith respectively or within five years after the completion of such works or after the removal of such temporary structures, any accumulation of silt or other material shall be created within the protected area in consequence of—

(i) the construction of the Parkeston works or such temporary structures; or

(ii) dredging carried out to afford access for vessels to the Parkeston works;

which shall cause an impediment to the free navigation of the protected area, the Board, if so requested by the protected interests within the period of five years after such completion, shall remove such accumulation of silt or other material, and, if they refuse or fail to do so, the protected interests may themselves cause the work to be done and may recover from the Board the reasonable cost thereof;

(b) Should any such accumulation arise within the said period of five years and be removed in accordance with the provisions of subparagraph (a) of this paragraph then any recurrence of such accumulation shall from time

to time be removed as aforesaid during a period of ten years after the completion of the Parkeston works or the removal of such temporary structures, as the case may be.

PART V
—cont.

- (3) Any difference arising between the Board and the protected interests under this section shall be settled by arbitration.”

21.—(1) Section 289 of the Town and Country Planning Act 1971 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the session 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Act as if it had been passed during that session; and accordingly the Town and Country Planning Act 1971 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Act.

Saving for
Town and
Country
Planning
Act 1971.
1971 c. 78.

(2) In their application to development authorised by this Act, article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1963 (which permit development authorised by Private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to development begun within five years after the passing of this Act.

(3) In this section the reference to article 3 of, and Class XII in Schedule 1 to, the Town and Country Planning General Development Order 1963 includes a reference to corresponding provisions of any general order superseding that order made under section 24 of the Town and Country Planning Act 1971 or any corresponding provision of an Act repealing that section.

22. Where under this Act any difference (other than a difference to which the provisions of the Compulsory Purchase Act 1965, as applied by this Act, apply) is to be referred to or settled by arbitration, then, unless otherwise provided, such difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Arbitration.
1965 c. 56.

23. All costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, shall be paid by the Board and may in whole or in part be defrayed out of revenue.

Costs of Act.

SCHEDULES

Section 7.

SCHEDULE 1

THE LEVEL CROSSINGS REFERRED TO IN SECTION 7 (AS TO CERTAIN LEVEL CROSSINGS) OF THIS ACT

PART I

In the county of Berkshire—

In the parish of Lockinge in the rural district of Wantage—

The level crossing known as Butterfly Lane crossing whereby the road connecting the Wantage to Oxford Road with Tulwick Lane and Grove Park Drive is crossed by the railway between Didcot and Swindon stations.

PART II

In the county of Norfolk—

In the parish of Tunstead in the rural district of Smallburgh—

The level crossing known as Church Lane crossing whereby Church Lane is crossed by the railway between Wroxham and Worstead stations.

In the county of West Suffolk—

In the parish of Great Barton in the rural district of Thingoe—

The level crossing known as Cattishall No. 15 crossing whereby the road from Great Barton to Bury St. Edmunds is crossed by the railway between Bury St. Edmunds and Thurston stations.

In the West Riding of the county of York—

In the parish of Hessay in the rural district of Nidderdale—

The level crossing known as Hessay Road crossing whereby Shirbutt Lane is crossed by the railway between Hammerton and Poppleton stations.

In the urban district of Bentley-with-Arksey—

The level crossing known as Bentley Lane No. 262 crossing whereby Fowler Bridge Road is crossed by the railway between Doncaster and Selby stations.

SCHEDULE 2

LANDS REFERRED TO IN SUBSECTION (2) OF SECTION 9 (POWER TO ACQUIRE Section 9.
LANDS) OF THIS ACT

Area	No. on deposited plans	Purposes for which the lands may be used
(1)	(2)	(3)
In the county of Essex— Urban district of Basildon	3, 4	To provide access to Church Road and a working site for Work No. 1.
	5, 7, 9, 11	To provide access to Jotman's Lane and a working site for Work No. 1.
	15	To provide a working site for Work No. 1.
In the county of Berkshire— Parish of Shrivenham in the rural district of Faringdon	1 to 4	To carry out alterations and improvements to the railway between London and Bristol.
Parish of Compton Beauchamp in the rural district of Faringdon	1 to 6	To carry out alterations and improvements to the railway between London and Bristol.
In the county of Wiltshire— Parish of Langley Burrell Without in the rural district of Calne and Chippenham	1 to 3	To carry out alterations and improvements to the railway between London and Bristol.

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British Railways Act 1972

CHAPTER xxxv

ARRANGEMENT OF SECTIONS

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Section

PRELIMINARY

1. Short title.
2. Interpretation.
3. Incorporation of general Acts.
4. Application of Part I of Compulsory Purchase Act 1965.

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WORKS

5. Power to make work.
6. Further works and powers.
7. As to certain level crossings.
8. Incorporation of provisions of Acts of 1963, 1967 and 1968 relating to works.

PART III

LANDS

Section

9. Power to acquire lands.
10. Power to acquire easements only in certain cases.
11. Period for compulsory purchase of lands and easements.
12. Incorporation of provisions of Acts of 1963, 1967 and 1969 relating to lands.

PART IV

PROTECTIVE PROVISIONS

13. Incorporation of provisions of Acts of 1963 and 1967.
14. For protection of Essex County Council.
15. For protection of port authority and users of the creek.
16. Marking of works in the creek.
17. For protection of Essex River Authority.

PART V

MISCELLANEOUS

18. Amendment of section 17 of Act of 1970.
19. Repeal.
20. Amendment of Act of 1971.
21. Saving for Town and Country Planning Act 1971.
22. Arbitration.
23. Costs of Act.

SCHEDULES:

Schedule 1—The level crossings referred to in section 7 (As to certain level crossings) of this Act.

Schedule 2—Lands referred to in subsection (2) of section 9 (Power to acquire lands) of this Act.