



British Railways (No. 2) Act 1992

1992 CHAPTER xi

PART V

PROTECTIVE PROVISIONS

40 For protection of sewerage undertakers

For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between the Board and the sewerage undertaker concerned, have effect:—

(1) In this section—

“the company” means the sewerage undertaker for the area of the works or whose sewers are affected;

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act; and

“specified work” means so much of the works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer:

- (2) (a) Before commencing the construction or renewal of any specified work or, in the case of any temporary work, its removal the Board shall submit to the company plans thereof as described in paragraph (3) below (in this section referred to as “the said plans”) and shall not commence that work until the company has signified in writing its approval of the said plans;
- (b) Any approval of the company required under this paragraph—
- (i) may be given subject to reasonable conditions;
 - (ii) shall not be unreasonably withheld;
 - (iii) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval:

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- (3) (a) The plans to be submitted to the company shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the company within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which the Board may propose to any such sewers;
 - (b) For the purpose of the preparation of the said plans the company shall permit the Board to have access to plans in its possession and to any of its sewers:
- (4) The company may require such modifications to be made to the said plans as may be reasonably necessary to secure the sewerage system of the company against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer:
- (5) The specified work shall be constructed, or (in the case of any temporary work) removed, in accordance with the plans approved, or deemed to have been approved, as aforesaid or settled by arbitration, as the same may be amended from time to time by agreement between the Board and the company, and in the construction or removal of the specified work the Board shall comply with all reasonable requirements of the company and shall provide new, altered or substituted sewers or works for the protection of any sewers of the company, in such manner as the company may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work:
- (6) All works under paragraph (5) above for the provision of new, altered or substituted sewers or the protection of any sewers of the company shall, where so required by the company, be constructed by the company or under the supervision (if given) of an officer of the company duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the company in the construction of such works, or in the preparation or examination of plans or designs therefor, or in such supervision, shall be paid to the company by the Board:
- (7) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the company, have been completed under this section to the reasonable satisfaction of the company, they shall be vested in and become maintainable by the company:
- (8) (a) The Board shall be liable to make good, or, if the company so decide, to repay to the company any expense reasonably incurred by the company in making good, all injury or damage to any sewers, drains or works vested in the company (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken therefor and the provision of any new, altered or substituted sewer or any protective work under this section and shall pay to the company any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work;
- (b) The Board shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company may incur or have to pay or which it may sustain

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in consequence of the construction of a specified work or of the failure or want of repair thereof or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Board, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work:

Provided that the company 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 in writing of the Board;

- (c) Nothing in sub-paragraph (a) or (b) above shall impose any liability on the Board in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the Board, its contractors or agents:
- (9) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the Board, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this section:
 - (10) The approval by the company of any plans, drawings, sections or specifications or the supervision by it of any work under this section shall not (if it was done without negligence on the part of the company, its officers, servants, or, if not the Board, its contractors or agents) exonerate the Board from any liability or affect any claim for damages by the company:
 - (11) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 20 (Temporary stoppage of highways) of this Act, the company shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to inspect, repair, maintain, renew, alter, protect, remove or use any sewer which at the time of the stopping up or diversion was in that highway:
 - (12) Where, in consequence of this Act, any part of any street, bridleway or footpath in which any sewer is situate ceases to be part of the street, bridleway or footpath, the company may exercise the same rights of access to such sewer as it enjoyed immediately before the passing of this Act, but nothing in this paragraph shall affect any right of the Board or of the company to require alteration of such sewer under this section:
 - (13) The Board shall, so far as is reasonably practicable, so exercise the powers conferred by section 21 (Underpinning of buildings near works) of this Act as not to obstruct or render less convenient the access to any sewer:
 - (14) As soon as reasonably practicable after the completion of the construction of the specified works the Board shall deliver to the company a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this section:
 - (15) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the company in respect of any sewer or other apparatus constructed, laid or erected in land belonging to the Board before the passing of this Act:
 - (16) Any difference arising between the Board and the company under this section shall be referred to and settled by arbitration.