



British Railways Act 1993

1993 CHAPTER iv

PART IV

PROTECTIVE PROVISIONS

40 Notice of interference with roads

Before breaking up or otherwise interfering with any road to which the public has access in connection with the construction of any of the works under the powers of this Act, the Board shall (except in case of emergency) give not less than 14 days' notice in writing to the chief officer of police.

41 For protection of electricity, gas and water undertakers

For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Board and the undertakers concerned, have effect:—

(1) In this section—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“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 or water undertakers, any mains, pipes or other apparatus belonging to or maintained by such undertakers;

(not being, except in paragraph (2) below, apparatus in respect of which the relations between the Board and the undertakers are regulated by the provisions of Part III of the New Roads and Street Works Act 1991) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

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“functions” includes powers and duties;

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

“undertakers” means any person authorised to carry on, in any area within which the Board are by this Act authorised to purchase land or execute works, an undertaking for the supply of gas or water or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained:

- (2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 21 (Temporary stoppage of highways) of this Act, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway:
- (3) The Board, in the case of the powers conferred by section 22 (Underpinning of buildings near works) of this Act, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers is caused, the Board shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply; and shall—
- (a) make reasonable compensation to the undertakers for any loss sustained by them; and
 - (b) indemnify the undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertakers;

by reason of any such damage or interruption:

Provided that—

- (i) nothing in this paragraph shall impose any liability on the Board with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen;
 - (ii) the undertakers 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:
- (4) Notwithstanding anything in section 23 (Use of sewers, etc., for removing water) of this Act, no use shall be made by the Board in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water:
- (5) Notwithstanding anything in this Act or shown on the deposited plans the Board shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
- (6) If the Board, in the exercise of the powers of this Act, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section

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and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers:

- (7) If the Board, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Act, require the removal of any apparatus placed in that land, they shall give to the undertakers written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed and in that case (or if in consequence of the exercise of any of the powers of this Act the undertakers reasonably require to remove any apparatus) the Board shall afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Board and thereafter for the maintenance, repair, renewal and inspection of that apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Board, or the Board are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Board, forthwith use their best endeavours to obtain the necessary facilities and rights in that last-mentioned land:

- (8) (a) Any alternative apparatus to be constructed in land of the Board under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Board or in default of agreement settled by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (7) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Board to be removed under the provisions of this section:
- (9) Notwithstanding anything in paragraph (8) above, if the Board give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Board, that work, in lieu of being executed by the undertakers, shall be executed by the Board with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Board to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus:

- (10) Where, in accordance with the provisions of this section, the Board afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Board of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Board and the undertakers or in default of agreement settled by arbitration:

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Provided that—

- (a) in settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Board, the arbitrator shall—
 - (i) give effect to all reasonable requirements of the Board for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Board or the traffic on the railway; and
 - (ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be substituted;
 - (b) if the facilities and rights to be afforded by the Board in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Board to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:
- (11) (a) Not less than 28 days before commencing to execute any works that are referred to in paragraph (7) above and are near to or will or may affect any apparatus the removal of which has not been required by the Board under the said paragraph (7), the Board shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Those works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of the works:

Provided that—

- (i) if the undertakers within 14 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Board, reasonably require the removal of any apparatus and give written notice to the Board of that requirement, the foregoing provisions of this section shall apply as if the removal of the apparatus had been required by the Board under paragraph (7) above;
- (ii) nothing in this sub-paragraph shall preclude the Board from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of a new plan, section and description;
- (c) The Board shall not be required to comply with sub-paragraph (a) above in a case of emergency but in that case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the

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works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances:

- (12) Where, by reason of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall affect any right of the Board or of the undertakers to require removal of such apparatus under this section or the power of the Board to execute works in accordance with paragraph (11) above:
- (13) Subject to paragraph (14) below, the Board shall pay to the undertakers the costs, charges 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 (7) 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 of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Board of the powers of this Act:

- (14) If the cost of maintaining, using, repairing or renewing any apparatus is reduced by reason of any of the works, including the provision of alternative apparatus under this section, a capitalised sum representing that saving shall be paid by the relevant undertakers to the Board or set off against any sums payable by the Board to the relevant undertakers under this section:
- (15) Where, by reason of the stopping up of any highway under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Board shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Board) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary:

Provided that the Board shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Board been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

- (16) Any difference arising between the Board and the undertakers under this section shall be referred to and settled by arbitration:
- (17) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the undertakers in respect of any apparatus laid or erected in land belonging to the Board at the date of the passing of this Act.

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42 For protection of North West Water Limited

For the protection of North West Water Limited (in this section referred to as “the company”) the following provisions shall, unless otherwise agreed in writing between the Board and the company, have effect:

- (1) In this section—
 - “sewer” includes any main used for the conveyance of sewage sludge or sewage effluent and any pipe subway vested in or maintained by the company for the purpose of sewerage or sewage disposal; and
 - “specified work” means so much of the works within the area of the company, and of any work (whether temporary or permanent) forming part of, or constructed in connection with, those 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 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 have signified their approval of the said plans;
 - (b) The company’s approval shall not be unreasonably withheld and, if within 56 days after the submission of the said plans the company have not approved or disapproved them, they shall be deemed to have approved them:
- (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 and shall comprise detailed drawings of every alteration which the Board may propose in 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 their possession and to any of their sewers:
- (4) The company may require such modifications to be made in 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 their sewers:
- (5) The specified work shall be constructed in accordance with the plans approved, or deemed to be approved, as aforesaid or settled by arbitration, as they may be amended from time to time by agreement between the Board and the company, and in the construction of the specified work the Board shall comply with all reasonable requirements of the company of which due notice is given to the Board 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 shall reasonably require for the proper protection of, and for preventing injury or impediment to, those sewers 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 execution of those works, or in

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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 new, altered or substituted sewer, or any protective work forming part of any new, altered or substituted sewer or any existing sewer of the company, have been completed under this section, they shall be 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 any 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 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 they 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) Nothing in sub-paragraph (a) 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, their officers, servants, 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 them of any work under this section shall not (if it was done without negligence on the part of the company, their employees, contractors or agents) exonerate the Board from any liability or affect any claim for damages by the company:
- (11) 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:
- (12) Any difference arising between the Board and the company under this section shall be referred to and settled by arbitration:
- (13) 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.

43 For protection of telecommunications operators

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

- (1) In this section expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act:

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- (2) The temporary stopping up or diversion of any highway under section 21 (Temporary stoppage of highways) of this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that highway.

44 Crown rights

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Board to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any river)—
- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
 - (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.
- (2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.