



Midland Metro Act 1992

1992 CHAPTER vii

PART IV

PROTECTIVE PROVISIONS

19 Application of protective provisions of Act of 1989

- (1) The following protective provisions of the Act of 1989 shall, subject to the modifications specified in subsection (2) below and any other necessary modifications, apply for the purposes of this Act as they apply for the purposes of that Act:—
- section 36 (Notice to police);
 - section 37 (As to highways, traffic, etc.);
 - section 40 (For protection of public sewers);
 - section 41 (For protection of certain statutory undertakers);
 - section 42 (For protection of telecommunications operators);
 - section 43 (Crown rights).
- (2) For the purposes of this section—
- (a) in the said section 36, after the word “police”, there shall be inserted the words “and to the fire authority”;
 - (b) in the said section 40, paragraph (14) shall not apply to the construction of any authorised railway in land now forming part of, or adjoining, any existing railway of the railways board;
 - (c) in the said section 41, paragraph (16) shall not apply to the construction of any authorised railway in land now forming part of, or adjoining, any existing railway of the railways board.

20 As to underground works affecting highways

The following provisions shall, unless otherwise agreed in writing between the Executive and the highway authority concerned, apply and have effect in relation to the underground railways in addition to the provisions of section 37 (As to highways, traffic, etc.) of the Act of 1989 as applying for the purposes of this Act:—

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- (1) In this section “highway” means a highway vested in, or repairable or maintained by, the highway authority:
- (2) Wherever in this section provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the highway authority may require, but shall not be unreasonably withheld:
- (3) The Executive shall not, without the consent of the highway authority, construct any part of the underground railways in bored tunnel within 7 metres of the surface of any highway except in accordance with plans and sections submitted to, and approved by, the highway authority:

 Provided that, if within 28 days after such plans and sections have been submitted the highway authority have not approved or disapproved them, they shall be deemed to have approved the plans and sections as submitted:
- (4) No part of the underground railways which is constructed in bored tunnel under a highway shall, except with the consent of the highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway:
- (5) Except with the consent of the highway authority, the Executive shall not open or make any permanent openings in, or erect or construct any structure or erection above, the surface of the carriageway or footway of any highway:
- (6) Any difference arising between the Executive and the highway authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

21 For protection of National Rivers Authority

For the protection of the National Rivers Authority (in this section referred to as “the Authority”) the following provisions shall, unless otherwise agreed in writing between the Executive and the Authority, have effect:—

- (1) In this section—
 - “construction” includes placing and altering and, in relation to temporary works, includes removal;
 - “drainage work” means any watercourse as defined in the Land Drainage Act 1991, and includes any land regularly used for providing flood storage capacity for any such watercourse and any other structure or appliance under the control of the Authority constructed or used for defence against water;
 - “plans” includes sections, drawings, specifications, method statements and other such particulars;
 - “specified work” means so much of any work authorised by this Act as is likely to affect any drainage work or the flow of water in, to or from any such drainage work:
- (h) (a) Not less than two months before beginning the construction of any specified work, the Executive shall submit to the Authority plans of the work and such further particulars available to them as the Authority may, within 28 days of the submission of the plans, reasonably require;

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- (b) Any such specified work shall not be constructed except in accordance with plans approved by the Authority, or settled by arbitration, and in accordance with any reasonable requirements made by the Authority for the protection of any drainage work and for the prevention of flooding;
 - (c) The requirements which the Authority may make under sub-paragraph (b) above include conditions requiring the construction of such protective works by, and at the expense of, the Executive during the construction of the specified work as are reasonably necessary to safeguard a drainage work against damage or to secure that the efficiency of a drainage work for flood defence purposes is not impaired:
- (3) If within a period of two months after the submission of any plans under paragraph (2) (a) above the Authority do not inform the Executive in writing that they disapprove of those plans, stating the grounds of their disapproval, they shall be treated for the purposes of this section as having approved them:
- (4) Any specified work, and all protective works required by the Authority under paragraph (2) above, shall be constructed to the reasonable satisfaction of the Authority and the Authority shall be entitled by their officer to watch and inspect the construction of such works:
- (5) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is otherwise damaged, such damage shall be made good by the Executive to the reasonable satisfaction of the Authority and, if the Executive fail to do so, the Authority may make good the same and recover from the Executive the expense reasonably incurred by them in so doing:
- (6) The Executive shall pay to the Authority all costs, charges and expenses reasonably incurred by them in respect of the examination and approval of plans under this section:
- (c) (a) The Executive shall indemnify the Authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Authority by reason or in consequence of—
- (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
 - (ii) any raising of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
 - (iii) any flooding or increased flooding of any such lands;
- which may be caused by, or result from, the construction of any authorised work or any act or omission of the Executive, their contractors, agents, workmen or servants whilst engaged upon the work;
- (b) The Authority shall give to the Executive reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the Executive who, if they withhold such consent and confirm to the Authority their acceptance of liability under this paragraph in respect of the claim or demand in question, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand:
- (8) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Authority, or to their satisfaction, or in

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accordance with any directions or award of an arbitrator, shall not relieve the Executive from any liability under the provisions of this section:

- (9) For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under a main river) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Authority under this section with respect to the erection of any structure shall be deemed also to constitute a consent or approval under the said section 109 as respects the erection of that structure:
- (10) To the extent to which byelaws made under section 66 of the Land Drainage Act 1991 or paragraph 5 of Schedule 25 to the Water Resources Act 1991 apply to anything done in relation to railway property or the use thereof, those byelaws shall apply to anything done under this Act:
- (11) Any difference arising between the Executive and the Authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

22 For protection of British Railways Board

For the protection of the British Railways Board (in this section referred to as “the railways board”) the following provisions shall, unless otherwise agreed in writing between the Executive and the railways board, have effect:—

- (1) In this section—
 - “construction” includes placing, alteration and renewal;
 - “the engineer” means an engineer to be appointed by the railways board;
 - “plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction);
 - “railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works;
 - “specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property:
- (2) The Executive shall not under the powers of this Act acquire compulsorily any land or other property of the railways board, or any right in such land or other property, without the consent of the railways board, which consent shall not be unreasonably withheld:
- (3) The Executive shall before commencing the construction of the specified works supply to the railways board proper and sufficient plans thereof for the approval of the engineer and shall not commence the construction of those works until such plans have been approved in writing by the engineer or settled by arbitration:

Provided that approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 56 days after the plans have been supplied to the railways board the engineer has not notified his disapproval of the plans and the grounds of his disapproval, he shall be deemed to have approved the plans as supplied:
- (4) Where so required by the engineer, the plans of any specified work in respect of which an easement is acquired in or over railway property shall include provision for the

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fencing, to the reasonable satisfaction of the engineer, of any railway comprised in that work from any other railway property adjoining that work:

- (5) If within 56 days after such plans have been supplied to the railways board, the railways board give notice to the Executive that the railways board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of any existing railway or the safe operation of traffic on the railways of the railways board then, if the Executive desire such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Executive in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (6) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the safety or stability of the railways of the railways board and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Executive, if the railways board so desire, with all reasonable dispatch, and the Executive shall not commence the construction of the specified works until the engineer shall have notified the Executive that the protective works have been completed to his reasonable satisfaction:
- (7) The Executive shall give to the railways board not more than 6 months' and not less than 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property:
- (8) When the construction of any specified work is commenced it shall be carried out—
 - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage to railway property as may be; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways board or the traffic thereon and the use by passengers of railway property:
- (a) (a) If any damage to railway property or any such interference or obstruction shall be caused or take place, the Executive shall, notwithstanding any such approval as aforesaid, make good such damage and pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, interference or obstruction;
- (b) Nothing in sub-paragraph (a) above shall impose any liability on the Executive with respect to any damage, cost, expense or loss which is attributable to the neglect or default of the railways board or their servants or agents:
- (10) The Executive shall—
 - (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction; and

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- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction of those works:
- (11) The railways board shall—
- (a) at all times afford reasonable facilities to the Executive and their agents for access to any works carried out by the railways board under this section during their construction; and
 - (b) supply the Executive with such information as they may reasonably require with regard to such works or the method of construction of those works:
- (12) If any alterations or additions, either permanent or temporary, to any existing railway of the railways board are reasonably necessary during the construction of the specified works, or during a period of 12 months after their completion, in consequence of the construction of the specified works, and the railways board give to the Executive reasonable notice of their intention to make such alterations or additions, the Executive shall pay to the railways board the reasonable cost thereof including, in the case of permanent alterations and additions, 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, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Executive to the railways board under this section:
- (13) The Executive shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the Executive as provided by paragraph (5) above or in constructing any protective works under the provisions of paragraph (6) above including, in respect of any permanent protective works, a capitalised sum representing the reasonable cost of maintaining and renewing those works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railways and for preventing as far as may be interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
 - (c) in respect of any special traffic working resulting from—
 - (i) any speed restrictions which may, in the opinion of the engineer, be necessary by reason of the construction, maintenance, repair or failure of the specified works; or
 - (ii) the substitution, suspension or diversion of services which may be necessary for that reason;
 - (d) in respect of any additional temporary lighting of railways in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction, maintenance or failure of the specified works;
 - (e) in respect of the approval by the engineer of plans supplied by the Executive under paragraph (3) above and the supervision by him of the construction of the specified works:
- (14) If at any time after the completion of the construction of the specified works, not being works vested in the railways board, the railways board give notice to the Executive that

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the state of repair of the specified works appears to affect prejudicially any existing railway of the railways board, the Executive shall, on receipt of such notice, take such steps as may be reasonably necessary to remedy any such defect:

- (15) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any existing railway of the railways board, the Executive shall consult with the railways board and, subject to the approval of the Secretary of State, comply with their reasonable requirements with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:
- (16) If the cost to the railways board of altering any existing railway within its boundaries or of maintaining or reconstructing any existing railway, or any existing structure or installation provided in connection therewith, under any powers existing at the passing of this Act, is increased by reason of the existence of the specified works, any such additional expense reasonably so incurred by the railways board, after giving 56 days' notice to the Executive, shall be repayable by the Executive to the railways board:
- (17) (a) The Executive shall be responsible for and make good to the railways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the railways board—
- (i) by reason of the construction, repair or failure of the specified works; or
 - (ii) by reason of any act or omission of the Executive or of any persons in their employ or of their contractors or others whilst engaged upon the construction or repair of the specified works;
- and the Executive shall indemnify the railways board from and against all claims and demands arising out of or in connection with the construction, repair or failure of the specified works or any such act or omission as aforesaid;
- (b) The fact that any act or thing may have been done by the railways board on behalf of the Executive or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was not attributable to the neglect or default of the railways board or of any person in their employ or of their contractors or agents) excuse the Executive from the liability under this paragraph;
- (c) The railways board shall give to the Executive reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Executive:
- (18) Any difference arising between the Executive and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

23 For protection of British Waterways Board

For the protection of the British Waterways Board (in this section referred to as “the waterways board”) the following provisions shall, unless otherwise agreed in writing between the Executive and the waterways board, have effect:—

- (1) In this section—

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“the canal” means any canal or inland waterway owned or managed by the waterways board, and any works connected therewith for the maintenance of which the waterways board are responsible, and includes any lands held or used by the waterways board for the purposes of any canal;

“construction” includes execution, placing and alteration;

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

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

“the specified works” means so much of any of the authorised works as may be situated upon, under or over, or may in any way affect, the canal;

“the towing path” means the towing path forming part of the canal:

- (2) The Executive shall not under the powers of this Act acquire compulsorily any land or other property of the waterways board but they may acquire such easements and rights in any such land or property delineated on the deposited plans as they may reasonably require for the purposes of the authorised works:
- (3) The Executive shall, before commencing the construction of the specified works supply to the waterways board proper and sufficient plans thereof for the approval of the engineer, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

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

- (4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of the canal, and such protective works as may be reasonably necessary for those purposes shall be constructed by the Executive with all reasonable dispatch:
- (5) The Executive shall pay to the waterways board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent works authorised by this Act, including protective works provided under paragraph (4) above, but, if the cost of maintaining the canal, or of works of renewal on the canal, is reduced in consequence of any such protective works, a capitalised sum representing such saving shall be set off against any sum payable by the Executive to the waterways board under this section:
- (6) The Executive shall give to the engineer not less than 28 days' notice of their intention to commence the construction or repair of any of the specified works, or any protective works or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the waterways board may where appropriate arrange for the publication of notices bringing those works to the attention of users of their inland waterways:
- (7) When construction of any specified works is commenced the works shall be carried out—
 - (a) in accordance with the plans approved or deemed to be approved or settled as provided in paragraph (3) above with all reasonable dispatch;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

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- (c) so as not to interfere with or obstruct the use of the towing path so far as is reasonably practicable; and
 - (d) so as not to interfere with or obstruct the passage of vessels on the canal—
 - (i) at any time in the following periods:—
 - (a) the period beginning on 17th March and ending on 3rd November in each year; and
 - (b) the period beginning on 20th December in each year and ending on 3rd January in the following year;
except in case of emergency; and
 - (ii) at any other time so far as is reasonably practicable:
- (8) Where work for the repair of the specified works is intended which involves obstruction of the canal or towing path, the Executive shall consult the waterways board upon the steps to be taken for the purposes specified in paragraphs (7) (c) and (d) above:
- (9) Following the completion of the construction of the specified works the Executive shall restore the canal to a condition no less satisfactory than its condition immediately prior to the commencement of those works:
- (10) In the event of any obstruction of the canal or towing path by reason of the construction or failure of the specified works the Executive shall provide and maintain at their expense such temporary lighting of the canal and signal lights in the vicinity of the specified works as the engineer may reasonably require during such construction or failure:
- (11) The Executive shall not use any land or property of the waterways board (including the towing path) for the passage of vehicles, plant or machinery employed in the construction of the specified works except—
 - (a) in pursuance of such easements or rights as may have been acquired by them; or
 - (b) with the consent in writing of the engineer, which consent shall not be unreasonably withheld, and subject to the compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of damage to such land and property and of danger to persons thereon; and
 - (ii) in order to avoid or reduce any inconvenience to the waterways board, their officers and agents and all other persons lawfully on such land or property:
- (12) Unless agreed by the waterways board, if during the construction of the specified works any part of the towing path is closed to persons on foot or on cycles the Executive shall provide and maintain throughout the period of such closure a sufficient and convenient way in substitution therefor to the reasonable satisfaction of the waterways board:
- (13) The Executive shall not in the course of constructing or repairing the specified works do or permit anything which may result in the pollution of the canal or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid any such pollution:
- (14) Nothing in section 23 (Use of sewers, etc., for removing water) of the Act of 1989, as applied by this Act, shall authorise the Executive—

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- (a) to discharge any water directly or indirectly into the canal except with the consent in writing of the waterways board; or
 - (b) to carry out any works to, or make any opening in, or otherwise interfere with the canal (including the banks and bed thereof) save in accordance with plans approved by, and under the supervision (if given) of, the engineer:
- (15) The consent of the waterways board under sub-paragraph (14) (a) above and the approval of plans under sub-paragraph (14) (b) above shall not be unreasonably withheld but may be given subject to reasonable conditions which, without prejudice to the generality of the foregoing, may include conditions requiring the Executive to make payments to the waterways board for the discharge of water in accordance with the said section 23 to recoup any costs incurred by the board in respect of the said discharge, including payments in respect of the employment of persons in connection with such discharges and the cost to the waterways board of pumping water so discharged:
- (16) The Executive shall repay to the waterways board all costs, charges and expenses reasonably incurred by the waterways board—
- (a) in respect of the employment of any persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting the canal and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
 - (b) in respect of the approval by the engineer of plans supplied by the Executive under paragraph (3) or (14) above and the supervision by him of the construction of the specified works or the exercise of the powers of section 23 of the Act of 1989 as those powers have effect in accordance with sub-paragraphs (14) and (15) above;
 - (c) in bringing the specified works to the notice of users of the canal:
- (17) The Executive shall be responsible for and make good to the waterways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the waterways board—
- (a) by reason of the construction of the specified works or the failure thereof; or
 - (b) by reason of any act or omission of the Executive or of any persons in their employ, or of their contractors or others whilst engaged upon the construction of the specified works;

and the Executive shall effectively indemnify and hold harmless the waterways board from and against all claims and demands arising out of, or in connection with, the construction 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 in accordance with plans approved by the engineer, or in accordance with any requirement of the engineer or under his supervision, shall not (if it was done without negligence on the part of the waterways board or of any person in their employ, or of their contractors or agents) excuse the Executive from any liability under the provisions of this paragraph:

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

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