



# Heathrow Express Railway Act 1991

## 1991 CHAPTER vii

### PART IV

#### PROTECTIVE PROVISIONS

#### **35 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 works under the powers of this Act, the appropriate authority shall (except in case of emergency) give 14 days' notice in writing to the chief officer of police and make such arrangements with him as may be reasonably necessary so as to cause as little interference with the traffic in such road during the construction of such works as may be reasonably practicable.

#### **36 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 appropriate authority 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.

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### **37 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 appropriate authority and the undertakers concerned, apply and 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, in either case, apparatus in respect of which the relations between the appropriate authority and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950) and includes any building, structure or works for the lodging therein of apparatus;

“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; and

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

(2) Notwithstanding the temporary stopping up or diversion of any road, bridleway or footpath under the powers of section 16 (Temporary stoppage of roads, etc.) 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 road, bridleway or footpath 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 road, bridleway or footpath:

(3) The appropriate authority, in the case of the powers conferred by section 17 (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 or in consequence 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 shall be caused, the appropriate authority 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

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- (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 or in consequence of any such damage or interruption:

Provided that—

- (i) nothing in this paragraph shall impose any liability on the appropriate authority 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 appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority:
- (4) Notwithstanding anything in section 18 (Use of sewers, etc., for removing water) of this Act no use shall be made by the appropriate authority in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in the case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water, and the provisions of section 26 of the Public Utilities Street Works Act 1950 shall apply to, and in relation to, the laying down, taking up or altering of conduits, pipes or other works under the said section 18 as if executed by the appropriate authority as operating undertakers within the meaning of the said section 26 for purposes other than the purposes of a railway undertaking:
  - (5) Notwithstanding anything in this Act or shown on the deposited plans the appropriate authority shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
  - (6) If the appropriate authority, 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 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 shall have been constructed and be in operation to the reasonable satisfaction of the undertakers:
  - (7) If the appropriate authority, 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, and shall give to the undertakers written notice of such 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, or if, in consequence of the exercise of any of the powers of this Act, the undertakers shall reasonably require to remove any apparatus, the appropriate authority shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the appropriate authority and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the appropriate authority, and the appropriate authority are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the appropriate authority, forthwith

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use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:

- (8) (a) Any alternative apparatus to be constructed in land of the appropriate authority under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the appropriate authority or in default of agreement settled by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed shall have 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 appropriate authority to be removed under the provisions of this section:
- (9) Notwithstanding anything in paragraph (8) above, if the appropriate authority 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 be situate in any land of the appropriate authority, such work, in lieu of being executed by the undertakers, shall be executed by the appropriate authority 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 appropriate authority to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around any apparatus extending (where the apparatus is laid in a trench) to 300 millimetres or more above the apparatus:

- (10) Where, in accordance with the provisions of this section, the appropriate authority afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the appropriate authority 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 appropriate authority and the undertakers or in default of agreement determined by arbitration:

Provided that—

- (a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along any railway of the appropriate authority, the arbitrator shall—
- (i) give effect to all reasonable requirements of the appropriate authority for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations which may be required to prevent interference with any proposed works of the appropriate authority 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 appropriate authority 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

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which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the appropriate authority to the undertakers in respect thereof as shall appear 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 such works as 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 appropriate authority under the said paragraph (7), the appropriate authority shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Such 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 such works:

Provided that—

- (i) if the undertakers within 14 days after the submission to them of any such plan, section and description shall, in consequence of the works proposed by the appropriate authority, reasonably require the removal of any apparatus and give written notice to the appropriate authority of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the appropriate authority under the said paragraph (7);
- (ii) nothing in this sub-paragraph shall preclude the appropriate authority from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any such 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 such new plan, section and description;
- (c) The appropriate authority shall not be required to comply with sub-paragraph (a) above in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the 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, in consequence of this Act, any part of any street, road, bridleway or footpath in which any apparatus is situate ceases to be part of a street, road, bridleway or footpath, 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 prejudice or affect any right of the appropriate authority or of the undertakers to require removal of such apparatus under this section or the power of the appropriate authority to execute works in accordance with paragraph (11) above:
- (13) The appropriate authority 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 which may be required in consequence 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

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of any apparatus removed under the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—

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

by reason or in consequence of the execution, maintenance, user or failure of any such works or otherwise by reason or in consequence of the exercise by the appropriate authority of the powers of this Act:

- (14) Where, by reason or in consequence of the stopping up of any street, road or footpath under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such street, road or footpath or elsewhere is rendered derelict or unnecessary, the appropriate authority shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the appropriate authority) 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 or in consequence of such apparatus being so rendered derelict or unnecessary:

Provided that the appropriate authority 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 shall at the expense of the appropriate authority have been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

- (15) Any difference arising between the appropriate authority and the undertakers under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration:
- (16) Nothing in this section shall be deemed to prejudice or affect the provisions of any enactment or agreement regulating the relations between the appropriate authority and the undertakers in respect of any apparatus laid or erected in land belonging to the appropriate authority at the date of the passing of this Act.

### **38 For protection of sewers of Thames Water Utilities Limited**

For the protection of the sewers of Thames Water Utilities Limited (hereinafter called “the undertaker”) the following provisions shall, unless otherwise agreed in writing between the appropriate authority and the undertaker, apply and have effect:—

- (1) In this section—
  - “construction” includes execution, placing and altering and, in relation to temporary works, includes removal and “constructed” shall be construed accordingly;
  - “new, altered or substituted works” includes any works required under paragraph (3) below for the protection of any sewer;
  - “sewer” includes any sewer, drain or other works vested in the undertaker under the Water Act 1989, any main used for the conveyance of sewage sludge or sewage effluent and any pipe subway vested in or maintained by the undertaker; and

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“specified work” means so much of the works and of any work (whether temporary or permanent) forming part of, or constructed in connection with, the works, or any of them, 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, and includes the construction, maintenance or renewal of any such works:

- (2) The appropriate authority shall not commence any specified work (other than works of maintenance or repair) until they shall have given to the undertaker 56 days' previous notice in writing of their intention to commence the same by leaving such notice at the principal office of the undertaker with plans as described in paragraph (7) below (in this section referred to as “the said plans”) and until the undertaker shall have signified their approval of the said plans:

Provided that such approval shall not be unreasonably withheld and, if within 56 days after the submission of the said plans the undertaker have not approved or disapproved them, they shall be deemed to have approved the said plans:

- (3) The appropriate authority shall comply with and conform to all reasonable orders, directions and regulations of the undertaker in the construction of any specified work and shall provide new, altered or substituted works in such manner as the undertaker shall reasonably require for the proper protection of, and for preventing injury or impediment to, a sewer of the undertaker by reason of any specified work and shall save harmless the undertaker against all expenses to be occasioned thereby:
- (4) All such new, altered or substituted works shall, where so required by the undertaker be constructed by or under the direction, superintendence and control of an officer of the undertaker duly appointed for the purpose at the cost, charge and expense in all respects of the appropriate authority and all reasonable costs, charges and expenses to which the undertaker may be put by reason of such works, whether in the execution thereof, or in the preparation or examination of plans or designs or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the undertaker by the appropriate authority on demand:
- (5) When any such new, altered or substituted works or any work of defence connected therewith shall be completed by or at the cost, charges and expense of the appropriate authority under the provisions of this section, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the undertaker as any sewers or works now or hereafter may be:
- (6) Nothing in this Act shall extend to prejudice, diminish, alter or take away any of the rights, powers or authorities vested or to be vested in the undertaker in relation to sewers but all such rights, powers and authorities shall be as valid and effectual as if this Act had not been passed:
- (7) The plans to be submitted to the undertaker for the purposes of this section shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall accurately describe the position of all sewers of the undertaker within the limits of deviation (for which purpose the undertaker shall allow the appropriate authority access to plans in their possession and to any of their sewers in order to enable the appropriate authority to obtain reliable information) and shall comprise detailed drawings of every alteration which the appropriate authority may propose to make in any such sewers:

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- (8) The undertaker may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure a proper and convenient means of access to their sewers:
- (9) The appropriate authority shall be liable to make good, or, if the undertaker so decide, to bear any expense reasonably incurred by the undertaker in making good, all injury or damage caused by or resulting from the construction of any specified work to any sewers, drains or works vested in the undertaker which shall have power to recover any expense so incurred by them from the appropriate authority:
- (10) If, in the construction of any specified work, or any new, altered or substituted works, or any work of defence connected therewith provided in accordance with this section, the appropriate authority damage, or, without the consent of the undertaker, alter or in any way interfere with any existing sewer of the undertaker the appropriate authority shall—
- (a) pay to the undertaker 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 said construction; and
  - (b) give to the undertaker full, free and uninterrupted access at all times to any such new, altered or substituted sewer (but under the supervision and control of the appropriate authority which shall be provided as soon as possible) and every reasonable facility for the inspection, maintenance, alteration and repair thereof:
- (11) It shall be lawful for an officer of the undertaker duly appointed for the purpose at any reasonable time and, if required by the appropriate authority, under their supervision to enter upon and inspect any specified work or any other works constructed under the powers of this section:
- (12) The approval by the undertaker of any plans or the superintendence by them of any work under the provisions of this section shall not exonerate the appropriate authority from any liability or affect any claim for damages under this section or otherwise:
- (13) As soon as reasonably practicable after the completion of the construction of a specified work the appropriate authority shall deliver to the undertaker a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this section:
- (14) Any difference arising between the appropriate authority and the undertaker under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.

### **39 For protection of London Underground Limited**

For the protection of London Underground Limited (hereinafter called “the company”) the following provisions shall, unless otherwise agreed in writing between the appropriate authority and the company, apply and have effect:—

- (1) In this section—
- “construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;
  - “designated property” means any railways of the company and any works connected therewith for the maintenance or operation of which the company



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are responsible and includes any lands, premises, arches, cellars or vaults held or used by the company for the purposes of such railways or works;

“the engineer” means an engineer to be appointed by the company;

“plans” includes sections, drawings, calculations, methods of construction and particulars and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this section; and

“the specified works” means so much of the works of the appropriate authority as may be situated within 15 metres of, or may in any way affect, designated property:

(2) Notwithstanding anything in this Act or shown on the deposited plans, the appropriate authority shall not purchase compulsorily any designated property but they may purchase such easements or other rights in, under or over designated property in accordance with the provisions of section 21 (Purchase of subsoil or new rights only) of this Act as they may reasonably require for the purpose of the specified works:

(3) The appropriate authority shall, before commencing the specified works, furnish to the company proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that, if within 56 days after such plans have been furnished to the company the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

(4) If within 56 days after such plans have been furnished to the company, the company shall give notice to the appropriate authority that the company desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the safe operation of the company’s railways, then, if the appropriate authority desire such part of the specified works to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the appropriate authority in accordance with approved plans:

(5) 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 designated property and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch and the appropriate authority shall not commence the construction of the specified works until the engineer shall have notified the appropriate authority that the protective works have been completed:

(6) The appropriate authority shall give to the engineer not less than 28 days’ notice of their intention to commence the construction of any of the specified works and also, except in 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 designated property:

(7) The specified works shall, when commenced, be carried out—

(a) with all reasonable dispatch in accordance with approved plans;

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- (b) under the competent supervision (if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
  - (i) as little damage to designated property as may be; and
  - (ii) as little interference as may be with the conduct of traffic on any railway of the company and the use by passengers of designated property;

and, if any damage to designated property or any such interference shall be caused by the carrying out of the specified works, the appropriate authority shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the company all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference:

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

- (8) The appropriate authority shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (9) The company shall at all times afford reasonable facilities to the appropriate authority and their agents for access to any works carried out by the company under this section during their construction and shall supply the appropriate authority with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (10) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by the company at a reasonable cost after not less than 28 days' notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable in the circumstances) from the date of submission of plans, programmes and estimates of costs of such alterations and additions having been given to the appropriate authority, and the appropriate authority shall pay to the company on demand the cost thereof as certified by the engineer:
- (11) The appropriate authority shall repay to the company all costs, charges and expenses reasonably incurred by the company—
  - (a) in respect of the approval by the engineer of plans submitted by the appropriate authority;
  - (b) in constructing any part of the specified works on behalf of the appropriate authority as provided by paragraph (4) above or in constructing any protective works under the provisions of paragraph (5) above;
  - (c) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling any railway of the company and for preventing, as far as may be reasonably practicable, interference, obstruction,

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- danger or accident arising from the construction or failure of the specified works;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed and which may be due to the construction or failure of the specified works or from the substitution, suspension or diversion of railway services of the company which may be necessary for the same reason;
  - (e) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
  - (f) in respect of the supervision by the engineer of the specified works:
- (12) The appropriate authority shall be responsible for and make good to the company all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the company—
- (a) by reason of the specified works or the failure thereof; and
  - (b) by reason of any act or omission of the appropriate authority or of any persons in their employ or of their contractors or others whilst engaged upon the construction of the specified works;

and the appropriate authority shall effectively indemnify and hold harmless the company 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 by the company on behalf of the appropriate authority or in accordance with approved plans, 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 company or of any person in their employ or of their contractors or agents whilst engaged upon the construction of the specified works) excuse the appropriate authority from any liability under the provisions of this paragraph:

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

- (13) Any differences between the appropriate authority and the company under this section shall be referred to and settled by arbitration.

#### **40 For protection of London Buses Limited**

For the protection of London Buses Limited (hereinafter called “the company”) the following provisions shall, unless otherwise agreed in writing between the Board and the company, apply and have effect:—

- (1) In this section—

“the company” includes any subsidiary of London Buses Limited (within the meaning of section 736 of the Companies Act 1985) or any other person providing bus services in accordance with an agreement between that person and London Regional Transport pursuant to section 3 (2) of the London Regional Transport Act 1984 or any statutory modification or re-enactment thereof;

“construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;

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“designated property” means any premises of the company and any works connected therewith for the maintenance or operation of which the company are responsible and includes any lands, arches, cellars or vaults held or used by the company;

“the engineer” means an engineer to be appointed by the company;

“plans” includes sections, drawings, calculations, methods of construction and particulars and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this section; and

“the specified works” means so much of the works of the Board as may be situated within 15 metres of, or may in any way affect, designated property:

(2) Notwithstanding anything in this Act or shown on the deposited plans, the Board shall not purchase compulsorily any designated property but they may purchase such easements or other rights in, under or over designated property in accordance with the provisions of section 21 (Purchase of subsoil or new rights only) of this Act as they may reasonably require for the purpose of the specified works:

(3) The Board shall, before commencing the specified works, furnish to the company proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that, if within 56 days after such plans have been furnished to the company the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

(4) If within 56 days after such plans have been furnished to the company, the company shall give notice to the Board that the company desire themselves to construct any part of the specified works which in the opinion of the engineer will adversely affect the company’s operations, then, if the Board desire such part of the specified works to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Board in accordance with approved plans:

(5) 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 designated property and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch and the Board shall not commence the construction of the specified works until the engineer shall have notified the Board that the protective works have been completed:

(6) The Board shall give to the engineer not less than 28 days’ notice of their intention to commence the construction of any of the specified works and also, except in 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 designated property:

(7) The specified works shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with approved plans;
- (b) under the competent supervision (if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—

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- (i) as little damage to designated property as may be; and
- (ii) as little interference as may be with the conduct of the Company's operations and the use by passengers of designated property;

and, if any damage to designated property shall be caused by the carrying out of the specified works, the Board shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the company all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage and, if any interference shall be caused to the company's operations, the Board shall repay to the company all costs, charges and expenses reasonably incurred by the company in respect of any interference with the company's operations which may be due to the construction or operation of the specified works, including in particular, but without prejudice to the foregoing, any costs reasonably incurred, including the cost of employment of any inspectors or other persons whom it shall be reasonably necessary to appoint for the purpose of supervising any special arrangements for the movement of traffic arising from any of the specified works or the substitution, suspension or diversion of the company's services as a result thereof and any loss of revenue which the company shall incur as a result of the specified works:

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 company or their servants, contractors or agents:

- (8) The Board shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (9) The company shall at all times afford reasonable facilities to the Board and their agents for access to any works carried out by the company under this section during their construction and shall supply the Board with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (10) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by the company at a reasonable cost after not less than 28 days' notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable) from the date of submission of plans, programmes and estimates of costs for such alterations and additions having been given to the Board, and the Board shall pay to the company on demand such reasonable cost thereof as certified by the engineer:
- (11) The Board shall repay to the company all costs, charges and expenses reasonably incurred by the company—
  - (a) in respect of the approval by the engineer of plans submitted by the Board;
  - (b) in constructing any part of the specified works on behalf of the Board as provided by paragraph (4) above or in constructing any protective works under the provisions of paragraph (5) above;
  - (c) in respect of the employment of any inspectors and other persons whom it shall be reasonably necessary to appoint for inspecting and preventing, as far

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*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;

- (d) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the specified works:

(12) The Board shall be responsible for and make good to the company all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the Company—

- (a) by reason of the specified works or the failure thereof; and
- (b) by reason of any act or omission of the Board or of any persons in their employ or of their contractors or others whilst engaged upon the construction of the specified works;

and the Board shall effectively indemnify and hold harmless the company 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 by the company on behalf of the Board or in accordance with approved plans, 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 company or of any person in their employ or of their contractors or agents whilst engaged upon the construction of the specified works) excuse the Board from any liability under the provisions of this paragraph:

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

(13) Any differences between the Board and the company under this section shall be referred to and settled by arbitration.