



# Aire and Calder Navigation Act 1992

## 1992 CHAPTER iv

### PART IV

#### PROTECTIVE PROVISIONS

#### **36 For protection of British Railways Board**

For the protection of the railways board the following provisions shall, unless otherwise agreed in writing between the Corporation and the railways board, have effect:—

(1) In this section—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

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

“plans” includes sections, drawings, specifications, soil reports, calculations and descriptions (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 works authorised by this Act (whether temporary or permanent) as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property:

(2) The Corporation shall not under the powers of this Act acquire compulsorily any railway property but they may in accordance with the provisions of section 21 (Purchase of rights over land) of this Act acquire such rights in any railway property delineated on the deposited plans as they may reasonably require for the purposes of the specified works:

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- (3) The Corporation shall during the construction of the specified works fence off the specified works from railway property to the reasonable satisfaction of the engineer where so required by him:
- (4) Notwithstanding the provisions of section 9 (Power to deviate) of this Act or anything shown on the deposited plans and sections, the Corporation —
- (a) shall not, in the construction of Works Nos. 1 to 5, 10, 12 and 12A, or any of them, deviate from the lines or situations thereof shown on the deposited plans at or to any point within 15 metres of any railway property without the consent of the railways board (which consent shall not be unreasonably withheld);
  - (b) shall not, in the construction of Works Nos. 1 to 5 and 10 to 12A, or any of them, deviate downwards from the levels shown on the deposited sections at or to any point within 15 metres of any railway property without the consent of the railways board (which consent shall not be unreasonably withheld);
  - (c) shall so construct and maintain Work No. 11 (other than the connection with the public sewer running under the railway at Methley North Station level crossing) as to ensure that no part of that work is constructed closer than 14 metres, measured horizontally, from the outer edge of the nearest rail of the railways board's adjoining railway as existing on 1st January 1991:
- (5) The exercise of the powers of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of land, as applied by section 3 (Incorporation of Railways Clauses Consolidation Act 1845), of and incorporated with, this Act, shall not prevent the exercise by the railways board of such rights as the railways board may have of access (with or without vehicles, machinery and materials) for the railways board and their agents and employees over any such land to and from railway property:
- (6) The Corporation shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans thereof for the reasonable 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 if within 56 days after such plans have been furnished to the railways board the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:
- (7) If within 56 days after such plans have been furnished to the railways board, the railways board give notice to the Corporation 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 railway property then, if the Corporation 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 Corporation in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (8) 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 railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Corporation, if the railways board so desire, with all reasonable dispatch and the Corporation shall not commence the construction of the specified works until the engineer has notified

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the Corporation that the protective works have been completed to his reasonable satisfaction:

- (9) (a) The Corporation shall give to the railways board notice in writing of their intention to commence the construction of any of the specified works in accordance with sub-paragraph (b) of this paragraph and, except in emergency (when they shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of the specified works;
- (b) The period of notice required to be given by the Corporation to the railways board by virtue of sub-paragraph (a) of this paragraph shall be—
- (i) six months in any case where the engineer, upon signifying his approval or disapproval of plans furnished to the railways board under paragraph (6) above, has reasonably given it as his opinion that the construction, maintenance or repair of the specified works will require the Corporation to have temporary occupation of the permanent way of the railway (including land lying within a distance of 6 metres from any outer rail of the railway) or will necessitate the imposition of speed restrictions, or the substitution, diversion or suspension of train services; and
- (ii) 56 days in all other cases:
- (10) The specified works shall, when commenced, 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;
- and, if any damage to railway property or any such interference or obstruction is caused or takes place, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain in consequence of any such damage, interference or obstruction:
- (11) The Corporation shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
- (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
- (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (12) The railways board shall at all times afford reasonable facilities to the Corporation and their agents for access to any works carried out by the railways board under this section during their construction and shall supply the Corporation with such information as they may reasonably require with regard to such works or the method of construction thereof:

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- (13) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of the specified works or during a period of 12 months after completion thereof, those alterations and additions may be affected by the railways board after not less than 28 days' notice has been given to the Corporation and the Corporation shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect 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 the railway is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving may be set off against any sum payable by the Corporation to the railways board under this section:

- (14) The Corporation 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 Corporation as provided by paragraph (7) of this section or in constructing any protective works under the provisions of paragraph (8) of this section including, in respect of any permanent protective works, a capitalised sum representing the 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 railway property and for preventing as far as may be all 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 any speed restrictions which are necessary in consequence of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
  - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary in consequence of the specified works or the failure thereof;
  - (e) in respect of the approval by the engineer of plans submitted by the Corporation and the supervision by him of the specified works:
- (15) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the Corporation informing them that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Corporation shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as not prejudicially to affect railway property and, if and whenever the Corporation fail to do so, the railways board may make and do in and upon the land of the railways board or of the Corporation all such works and things as are requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Corporation:
- (16) All temporary structures, erections, works, apparatus and appliances erected or placed by the Corporation under the powers of this Act upon, over or under any railway of the railways board shall, as soon as reasonably practicable, be removed by the Corporation at times to be agreed with, and to the reasonable satisfaction of, the engineer and in

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such a way as to cause as little damage to railway property and as little interference with, or delay or interruption to, the traffic on the railways of the railways board as may be and, if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the Corporation shall forthwith make good such damage and pay to the railways board the reasonable costs and expenses to which they may be put and reasonable compensation for any loss which they may sustain in consequence of such damage, interference, delay or interruption:

- (17) Before providing any illumination or illuminated road traffic sign on or in connection with the specified works or in the vicinity of any railway of the railways board, the Corporation shall consult with the railways board and comply with their reasonable requirements in regard thereto 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:
- (18) Any additional expense which the railways board may reasonably incur after giving 28 days' notice to the Corporation in widening, altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act in consequence of the existence of the specified works shall be repaid by the Corporation to the railways board:
- (19) The Corporation 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—
- (a) in consequence of the specified works or the failure thereof; or
  - (b) in consequence of any act or omission of the Corporation or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the Corporation shall effectively indemnify the railways board from and against all claims and demands arising out of or in connection with 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 railways board on behalf of the Corporation 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 done without negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the Corporation from the liability under the provisions of this section:

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

- (20) Any difference arising between the Corporation 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.