



Heathrow Express Railway Act 1991

1991 CHAPTER vii

PART IV

PROTECTIVE PROVISIONS

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

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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
 - (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

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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 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 situated 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

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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 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;

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- (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 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

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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.