



# Aire and Calder Navigation Act 1992

## 1992 CHAPTER iv

### PART IV

#### PROTECTIVE PROVISIONS

#### **32 For protection of British Waterways Board**

For the protection of the Board the following provisions shall, unless in any case it is otherwise agreed between the Corporation and the Board, have effect:—

(1) In this section—

“construction” includes execution, placing, altering and the maintenance and repair of the works and “construct” and “constructed” shall be construed accordingly;

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

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

(2) Notwithstanding anything in this Act or shown on the deposited plans, the Corporation shall not acquire compulsorily any land or other property of the Board or rights over such land or property:

(3) The Corporation if they commence the construction of any part of the works described in Part I of Schedule 1 to this Act shall complete the whole of the works so described together with the further works and facilities described in Part II of that Schedule:

(4) The Corporation shall, before commencing the construction of the works, including temporary works, furnish to the Board proper and sufficient plans thereof for the reasonable approval of the engineer, and shall not commence the construction of the 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 Board the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:

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- (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 construction of the works to ensure the safety or stability of the navigation or to protect it from injury from the works (including works to ensure the safety or stability, or for the protection of, any part of the navigation which it is intended shall become a superseded length until such time as it is superseded) and such protective works as may be reasonably necessary for those purposes shall be constructed by the Corporation with all reasonable dispatch:
- (6) The Corporation shall pay to the Board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent protective works provided under paragraph (5) above, and of carrying out any additional dredging of the navigation necessitated by the exercise of any of the powers of this Act but if the cost of maintaining or dredging, or of works of renewal on, the navigation is reduced in consequence of the authorised works and any such protective works, a capitalised sum representing such saving shall be set off against any sum payable by the Corporation to the Board under this section:
- (7) The Corporation shall give to the engineer not less than 28 days' notice of their intention to commence the construction of the works or any protective 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 works in so far as such works of repair or maintenance affect or interfere with the navigation so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of their inland waterways:
- (8) The Corporation shall provide and maintain at their expense such temporary lighting of the navigation and signal lights in the vicinity of the works as the engineer may reasonably require during the construction of the works:
- (9) The construction of the works shall, when commenced, be carried out with all reasonable dispatch in accordance with the approved plans and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to the navigation and as little interference as may be with the passage of vessels using the navigation and if any damage to the navigation or any stoppage thereof or any interference with the passage of vessels using the navigation shall be caused by the construction of the works, or by the passage of vehicles, plant and machinery used in connection therewith, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and on demand pay to the 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, stoppage or interference:

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

- (10) The Corporation shall at all times afford reasonable facilities to the engineer for access to the works during their construction and shall supply him with all such information as he may reasonably require with regard to the works or the method of construction thereof:

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- (11) Without prejudice to paragraph (10) above the Corporation following the completion of the initial construction of the works shall restore so much of the navigation (other than the superseded length) as is affected by the works to a condition no less satisfactory than its condition immediately prior to the commencement of the works:
- (12) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation to discharge any water directly or indirectly into the canalised section of the navigation or Work No. 2 without the agreement of the Board in writing but nothing in this paragraph shall apply to the superseded length as from the transfer date:
- (13) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation—
  - (a) to discharge any water directly or indirectly into the new navigation downstream of the junction of Work No. 2 and Work No. 1 except in accordance with such reasonable conditions as may be prescribed in writing by the Board; or
  - (b) to carry out any works to, or make any opening in, or otherwise interfere with the navigation (including the banks and bed thereof) save in accordance with plans approved by, and under the supervision (if given) of the engineer, such approval not to be unreasonably withheld and, if within 56 days after such plans have been furnished to the Board the engineer has not notified his disapproval and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:
- (14) The conditions prescribed by the Board under paragraph (13) (a) above may include conditions—
  - (a) specifying the maximum volume of water which may be discharged in any period;
  - (b) authorising the Board to require the Corporation to suspend the discharge of water or to reduce the flow of water where this is necessary by reason of any operational requirement of the Board:
- (15) Nothing in section 18 (Discharges for works purposes) of this Act, and no approval of plans under paragraph (13) (b) above, shall confer on the Corporation any right to discharge water into the navigation after the completion of the works or, if any of the works are not completed, after the powers to carry out that part of the works have effectively been abandoned:
- (16) Nothing in section 19 (Discharges following completion of works) of this Act and no approval of plans under paragraph (13) (b) above shall confer on the Corporation any right to discharge water into the navigation after the dewatering of the opencast site has been completed:
- (17) The Corporation shall not in the course of constructing the works or exercising any of the powers of this Act or otherwise in connection therewith pollute or deposit any materials in the navigation (other than the superseded length) or do or permit anything which may result in such pollution and shall take such steps as the engineer may reasonably require to avoid or make good any breach of their obligations under this paragraph:
- (18) The Corporation shall repay to the Board all costs, charges and expenses reasonably incurred by the Board—

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- (a) in respect of the employment of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for the period of the construction of the works for inspecting, watching and lighting the navigation and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the works;
  - (b) in respect of the approval by the engineer of plans supplied by the Corporation under paragraphs (4) or (13) above and the supervision by him of the construction of the works or the exercise of the powers of section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act as those powers have effect in accordance with paragraphs (13), (14) and (15) above;
  - (c) in bringing the specified works to the notice of users of the waterways comprised in the undertaking of the Board:
- (19) The Corporation shall be responsible for and make good to the Board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the Board by reason 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 construction of the works or in exercising any of the powers of this Act and the Corporation shall effectively indemnify the Board from and against all claims and demands arising out of, or in connection with, the construction of the works or the exercise of any of the powers of this Act or any such failure, act or omission as aforesaid:
- Provided that—
- (i) nothing in this paragraph shall impose any liability on the Corporation with respect to any damage or injury to the extent that such damage or injury may be attributable to the act, neglect or default of the Board or of any person in their employ, or of their contractors or agents;
  - (ii) the 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) 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 Board or of any person in their employ, or of their contractors or agents) excuse the Corporation from any liability under the provisions of this section:
- (21) Nothing in this Act shall authorise the Corporation to make or maintain any permanent works in or over the navigation so as to reduce the width thereof or as to impede or prevent the passage of any vessel of a kind (as to its dimensions) for which the Board are required by section 105 (1) (b) and (2) of the Transport Act 1968 to maintain the navigation:
- (22) (a) In this paragraph “the relevant works” means so much of the works comprised in Work No. 1 as are situated downstream of the junction between Work No. 1 and Work No. 2;
- (b) The Corporation following the completion of the relevant works shall maintain the same to the reasonable satisfaction of the Board so as to enable the Board to comply with the duties imposed on them by or under section 41 (New navigation to be commercial waterway, etc.) of this Act and section 105 of the Transport Act 1968:

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- (23) Any difference arising between the Corporation and the Board under this section shall be determined by arbitration.

### **33 For protection of National Rivers Authority**

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

- (1) In this section—

“construction” includes execution, placing, altering, replacing and relaying and, in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water;

“the fishery” means the river Aire and includes fish in, or migrating to or from the river and the spawn, habitat and food of such fish;

“plans” includes sections, drawings, specifications, method statements and other such particulars;

“specified work” means so much of any work or operation authorised by this Act as is likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse; or
- (d) affect the conservation, distribution or use of water resources;

“watercourse” has the meaning given in section 72 of the Land Drainage Act 1991:

- (2) The Corporation shall not acquire compulsorily under the powers of this Act any land or other property of the Rivers Authority but they may subject to the consent of the Rivers Authority (which consent shall not unreasonably be withheld) in accordance with the provisions of section 21 (Purchase of rights over land) of this Act acquire such easements and rights as they may reasonably require for the purposes of the works in any such land or property delineated on the deposited plans:
- (3) In the event that the Corporation commence to construct Work No. 1 or 2 or any other specified work the Rivers Authority may so far as is reasonably necessary for the protection of any drainage work or the fishery or water resources or for the prevention of flooding and pollution require the Corporation to construct and complete the whole of that work and any other work required in the approval of that work under paragraph (4) below:
- (4) (a) Before beginning to construct any specified work, the Corporation shall submit to the Rivers Authority plans of the work and such further particulars available to them as the Rivers Authority may reasonably require;
- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Rivers Authority, or settled by arbitration;

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- (c) Any approval of the Rivers Authority required under this paragraph—
  - (i) shall not be unreasonably withheld;
  - (ii) shall be deemed to have been given if it is neither given nor refused within two months of the submission of plans for approval;
  - (iii) may be given subject to such reasonable requirements as the Rivers Authority may impose for the protection of any drainage work or the fishery or water resources and for the prevention of flooding and pollution:
- (5) Without prejudice to the generality of sub-paragraph (iii) of paragraph (c) of paragraph (4) above, but subject always to the provision of that sub-paragraph as to reasonableness, the requirements which the Rivers Authority may impose under that paragraph include—
  - (a) requirements as to the levels of the specified works and their alignments within the limits of deviation;
  - (b) requirements as to fish pass and other fisheries facilities, sluices, gauges and other monitoring devices to be constructed as part of or in connection with the works;
  - (c) conditions requiring the Corporation at their own expense—
    - (i) to provide or maintain means of access for the Rivers Authority;
    - (ii) to undertake landscaping;
    - (iii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work:
- (6) Any specified work, and all protective works required by the Rivers Authority under paragraph (4) above, shall be constructed to the reasonable satisfaction of the Rivers Authority and the Rivers Authority shall be entitled by its officer to watch and inspect the construction of such works:
- (7) 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 damaged, such impairment or damage shall be made good by the Corporation to the reasonable satisfaction of the Rivers Authority and, if the Corporation fail to do so, the Rivers Authority may make good the same and recover from the Corporation the expense reasonably incurred by them in so doing:
- (8) Without prejudice to the other provisions of this section, the Corporation shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during the construction of the works and shall not exercise the powers of section 8 (Power to improve and regulate flow of watercourses) of this Act in such a manner as is likely to affect prejudicially the operation of any fish pass facilities or other work provided to help secure or monitor the passage of fish:
- (9) (a) Plans of any specified work shall not be submitted by the Corporation to the Minister for his approval pursuant to section 9 of the Salmon and Freshwater Fisheries Act 1975 until plans of that work have been approved or are deemed to have been approved by the Rivers Authority or submitted for settlement

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- under paragraph (13)(a) below, and, if, on the submission of plans to the Minister, he requires any alteration of the plans so approved or settled under this section, or of any such requirement relating thereto, the Corporation shall, not less than 28 days before commencing the work, inform the Rivers Authority of any such alteration;
- (b) Subject to compliance with sub-paragraph (a) above, if there shall be any inconsistency between any plans approved or deemed to be approved by the Rivers Authority or settled under paragraph (4) above or any requirement relating thereto, and the plans approved by the Minister or any conditions or restrictions imposed by him under that section, the specified work shall be constructed in accordance with the plans approved by the Minister and subject to the conditions or restrictions imposed by him:
- (10) (a) Without prejudice to the other provisions of this section the Corporation shall indemnify the Rivers Authority against all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Rivers Authority 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 damage to the fishery; or
  - (iii) any raising of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
  - (iv) any flooding or increased flooding of any such land;
- which may be caused by, or result from, the construction of the works or any act or omission of the Corporation, their contractors, agents, workmen or servants whilst engaged upon the works;
- (b) The Rivers Authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:
- (11) 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 Rivers Authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Corporation from any liability under the provisions of this section:
- (12) For the purposes of section 109 of the Act of 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 Rivers 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:
- (13) (a) Any difference arising between the Corporation and the Rivers Authority under paragraph (4) above if the parties agree to arbitration shall be determined by arbitration, or if the parties do not agree to arbitration shall be settled by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly on a reference to them by the Corporation or the Rivers Authority after notice by one to the other;
- (b) Subject to sub-paragraph (a) above, any difference arising between the Corporation and the Rivers Authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

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### 34 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 Corporation and the undertakers concerned, have effect:—

(1) In this section—

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

“apparatus” means—

- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in Part I of the Electricity Act 1989) belonging to or maintained by such undertakers; or
- (b) mains, pipes or other apparatus belonging to or maintained by a public gas supplier; or
- (c) mains, pipes or other apparatus belonging to or maintained by a water undertaker for the purposes of water supply;

(not being in any case apparatus in respect of which the relations between the Corporation 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;

“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 Corporation are by this Act authorised to purchase land or execute works and, in relation to—

- (a) water undertakers, includes water undertakers in their capacity as undertakers authorised to carry on an undertaking for the supply of water within their area;
- (b) 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 or footpath under the powers of section 10 (Temporary stoppage of roads, rivers, 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 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 or footpath:

(3) Notwithstanding anything in this Act or shown on the deposited plans the Corporation shall not acquire any apparatus under the powers of this Act otherwise than by agreement:

(4) If the Corporation, 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:



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- (5) If the Corporation, 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 give to the undertakers not less than 56 days' 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 reasonably require to remove any apparatus, the Corporation shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Corporation 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 Corporation, and the Corporation 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 Corporation, as soon as reasonably practicable use their reasonable endeavours to obtain the necessary facilities and rights in such last-mentioned land:

- (6) (a) Any alternative apparatus to be constructed in land of the Corporation under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Corporation or in default of agreement determined by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or determined by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Corporation to be removed under the provisions of this section:
- (7) Notwithstanding anything in paragraph (6) above, if the Corporation 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 Corporation, such work, in lieu of being executed by the undertakers, shall be executed by the Corporation 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 Corporation 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 600 millimetres above the apparatus:

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

Provided that—

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- (a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along the navigation or the river the arbitrator shall—
    - (i) give effect to all reasonable requirements of the Corporation for ensuring the safety and efficient operation of the navigation or the river and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works or the traffic on the navigation or the river; 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 navigation or the river for which the alternative apparatus is to be substituted;
  - (b) if the facilities and rights to be afforded by the Corporation 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 Corporation to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:
- (9) (a) Not less than 56 days before commencing to execute any such works as are referred to in paragraph (5) above and are near to or will or may affect any apparatus the removal of which has not been required by the Corporation under the said paragraph (5), the Corporation 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 42 days after the submission to them of any such plan, section and description, in consequence of the works proposed by the Corporation, reasonably require the removal of any apparatus and give written notice to the Corporation of such requirement, the foregoing provisions of this section shall have effect as if the removal of such apparatus had been required by the Corporation under the said paragraph (5);
- (ii) nothing in this sub-paragraph shall preclude the Corporation from submitting at any time or from time to time, but in no case less than 56 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 Corporation 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;
  - (d) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the Corporation shall provide adequate alternative means of access to such apparatus:
- (10) Where, in consequence of this Act, any part of any street, road or footpath in which any apparatus is situate ceases to be part of a street, road 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 Corporation or of the undertakers to require removal of such apparatus under this section or the power of the Corporation to execute works in accordance with paragraph (9) above:
- (11) The Corporation shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (5) 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;
- in consequence of the execution, maintenance, user or failure of any such works or otherwise in consequence of the exercise by the Corporation of the powers of this Act:
- (12) Where, 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 Corporation shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Corporation) 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 Corporation shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Corporation been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:
- (13) Any difference arising between the Corporation and the undertakers under this section shall be determined by arbitration:
- (14) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Corporation and the undertakers in respect of any

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apparatus laid or erected in land belonging to the Corporation at the date of the passing of this Act.

### **35 For protection of sewers**

For the protection of the sewers of Yorkshire Water Services Limited (hereinafter called “the company”) the following provisions shall, unless otherwise agreed in writing between the Corporation and the company, 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 for the protection of any sewer;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act;

“specified work” means Works Nos. 11 and 12 and so much 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 Corporation shall not commence any specified work until they have given to the company 56 days' previous notice in writing of their intention to commence the same by leaving such notice at the principal office of the company with plans as described in paragraph (7) below (in this section referred to as “the said plans”) and until the company 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 company have not approved or disapproved them, they shall be deemed to have approved the said plans:

(3) The Corporation shall comply with and conform to all reasonable orders, directions and regulations of the company in the construction of any specified work and shall provide new, altered or substituted works in such manner as the company reasonably require for the proper protection of, and for preventing injury or impediment to, or for securing access to any existing sewer of the company by reason of any specified work and shall indemnify the company against all expenses to be occasioned thereby:

(4) All such new, altered or substituted works shall, where so required by the company, be constructed by or under the direction, superintendence and control of an officer of the company duly appointed for the purpose at the expense of the Corporation and all reasonable expenses to which the company 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 company by the Corporation:

(5) When any such new, altered or substituted works or any other work connected therewith is completed by or at the expense of the Corporation under the provisions of this section, it shall be under the control of the company:

(6) Nothing in this Act shall affect any right or power of the company in relation to sewers:

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- (7) The plans to be submitted to the company 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 company within the limits of deviation (for which purpose the company shall allow the Corporation access to plans in their possession and to any of their sewers in order to enable the Corporation to obtain reliable information) and shall comprise detailed drawings of every alteration which the Corporation may propose to make in any such sewers:
- (8) The company may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewerage system of the company against interference or risk of damage and to provide and secure a proper and convenient means of access to the sewers of the company:
- (9) If, in consequence of the construction of the works, any damage shall be caused to any sewer or property of the company (other than a sewer the repair of which is not reasonably necessary in view of its intended removal), the Corporation shall either make good the damage by restoring the sewer to its former standard of efficiency or where necessary construct some other work in substitution therefor or, if the company so requires, repay the cost reasonably incurred by the company in making good such damage and shall—
- (a) make reasonable compensation to the company for any loss sustained by them; and
  - (b) indemnify the company against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by the company;
- in consequence of any such damage:
- Provided that—
- (i) nothing in this paragraph shall impose any liability on the Corporation with respect to any damage to the extent that such damage is attributable to the act, neglect or default of the company, their officers, servants, contractors or agents; and
  - (ii) the company 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:
- (10) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 10 (Temporary stoppage of roads, rivers, etc.) of this Act, the company shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, alter, protect, remove or use any sewer which at the time of the stopping up or diversion was in that highway:
- (11) It shall be lawful for an officer of the company duly appointed for the purpose at any reasonable time and, if required by the Corporation, under their supervision to enter upon and inspect any specified work or any other works constructed under the powers of this section:
- (12) 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 company or to the satisfaction of the

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

- (13) Costs and expenses recoverable by the company from the Corporation under this Act include a proper proportion of the overhead charges of the company:
- (14) As soon as reasonably practicable after the completion of the construction of a specified work the Corporation shall deliver to the company 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:
- (15) Any difference arising between the Corporation and the company under this section shall be determined by arbitration.

### **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:
- (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

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- 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 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

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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:
- (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:



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- (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 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

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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.

### **37 Saving for nature conservation**

- (1) It shall be the duty of the Corporation in exercising the powers of this Act to—
- (a) take reasonable steps to further the conservation of flora, fauna or geological or physiographical features of scientific interest; and
  - (b) carry out such consultation as may reasonably be required by the Nature Conservancy Council for the furtherance of nature conservation.
- (2) Without prejudice to the generality of the foregoing, the duties in subsection (1) above shall be taken into account by the Corporation in reference particularly to the carrying out of their duties and functions under the following provisions of this Act:—
- section 10 (Temporary stoppage of roads, rivers, etc.);
  - section 17 (Diversion of flow of water); and
  - section 23 (Power to use bed and banks of rivers, etc.).

### **38 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 Corporation to take, use, enter upon

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or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of any river, channel, creek or bay)—

- (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) 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.