

ELIZABETH II



1990 CHAPTER xxii

An Act to authorise the Wardens and Assistants of Rochester Bridge in the county of Kent to construct works and to acquire lands; and for other purposes.

[26th July 1990]

WHEREAS by letters patent granted by King Richard 2 in the twenty-second year of his reign confirmed by the statute passed in the ninth year of King Henry 5 all the persons, manors, places and bounds within the county of Kent severally limited and the landowners of the manors, places and bounds aforesaid which were thereto bound and charged to make and repair the bridge between the city of Rochester and the town of Strood were ordained to be a commonalty for the support and governance of the said bridge with power to choose yearly from amongst themselves two persons to be wardens of the said bridge and the said wardens and commonalty and their successors were made able and capable to purchase and receive lands, tenements and rents of any persons whatever to have and to hold to them and their successors forever in aid of the support and reparation of the said bridge and it was enacted that they might have a common seal and might plead and be impleaded:

1421 c. 12.

And whereas by an Act passed in the eighteenth year of the reign of Queen Elizabeth 1 it was enacted that twelve persons of the said commonalty should be chosen yearly by the persons contributory to the said bridge to be assistants to the said two wardens:

1575 c. 17.

1584 c. 25.
1702 c. 12.

And whereas by Acts passed in the twenty-seventh year of the reign of Queen Elizabeth 1 and the first year of the reign of Queen Anne further provisions were enacted relating to the affairs of the said wardens and assistants:

1846 c. vi.

And whereas by the Rochester Bridge Act 1846 the wardens and commonalty were empowered to remove the old bridge and to construct a new bridge in place thereof:

And whereas the said new bridge has long since been completed:

And whereas in the year 1888 a scheme was made by the Charity Commissioners for the regulation of the property and endowments of the said bridge trust by the wardens and assistants therein called the Court:

1908 c. lvii.

And whereas by the Rochester Bridge Act 1908 the owners of the contributory lands were relieved from their liability to contribute to the maintenance and repair of the said bridge, the constitution of the Court of Wardens and Assistants was altered and the Court was incorporated by the name of "The Wardens and Assistants of Rochester Bridge in the county of Kent" and the property and endowments of the said bridge trust were vested in the Court in the manner provided by that Act:

And whereas in the course of time the said bridge and the approaches thereto became insufficient to accommodate vehicular traffic across the river Medway:

1965 c. xxxiii.

And whereas by the Rochester Bridge Act 1965 the said Wardens and Assistants were authorised to acquire from the British Railways Board an adjacent railway bridge no longer required for the purposes of their railway undertaking and to construct the bridge and other works described in that Act so as to provide a dual carriageway across the said river:

And whereas for 500 years and upwards there has been no expense to the public in respect of the construction and maintenance of any of the bridges constructed by the said bridge trust:

And whereas a scheme made by the Charity Commissioners in 1976 (which embodies the said scheme of 1888, as varied in the years 1927 and 1958) directs the said Wardens and Assistants to apply the income of the trust (inter alia) in making contributions to the execution of works, including the approaches thereto, tending to facilitate the passage over, under or across the river Medway:

And whereas the said bridges authorised in 1846 and 1965 (together with the bridge carrying the motorway M2 over the river Medway) can no longer provide sufficient accommodation for vehicular traffic and it would be of public and local advantage to empower the said Wardens and Assistants to construct a tunnel under the river Medway and the other works described in this Act and to acquire lands for that purpose:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

And whereas plans and sections showing the lines or situations and the levels of the works authorised by this Act, and a book of reference to such plans containing the names of the owners or reputed owners and lessees or reputed lessees and of the occupiers of the lands which may be acquired or used compulsorily under the powers of this Act have been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office, House of Commons, and with the proper officer of the Kent County

Council and such plans, sections and book of reference are in this Act respectively referred to as the deposited plans, the deposited sections and the deposited book of reference:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PRELIMINARY

1. This Act may be cited as the Medway Tunnel Act 1990.

Citation.

2.—(1) In this Act, unless the context otherwise requires—

Intepretation.

“the Act of 1965” means the Compulsory Purchase Act 1965;

1965 c. 56.

“the authorised works” means the works authorised by this Act;

“the borough” means the borough of Gillingham;

“the city” means the city of Rochester upon Medway;

“the county council” means the Kent County Council;

“the ports authority” means the Medway Ports Authority;

“the river” means the river Medway;

“the rivers authority” means the National Rivers Authority;

“the services company” means Southern Water Services Limited;

“street” has the meaning given by section 329 of the Highways Act 1980;

1980 c. 66.

“the tribunal” means the Lands Tribunal;

“the tunnel” means the tunnel forming part of Work No. 1;

“the tunnel approaches” means so much of the road passing through the tunnel as lies between reference point TQ 7499 6994 and reference point TQ 7652 6982 but excluding so much of the said road as is comprised in the tunnel;

“the tunnel undertaking” means the authorised works and includes all the lands, works, erections, appliances, cash, investments, stocks, stores and other real and personal property, assets and effects, rights, powers, privileges, liabilities and obligations for the time being held or used by the Wardens for the purpose of or in relation to the authorised works or to which they are for the time being subject for or in relation to those works;

“tunnel units” means sections of concrete, steel or other material (or combination of materials) designed to be attached together so as to constitute the framework of the tunnel;

“the Wardens” means the Wardens and Assistants of Rochester Bridge in the county of Kent.

(2) Where in this Act any distance or length is stated, or any reference point is referred to, in any description of works or functions, the reference to that distance, length or reference point shall be construed as if the words “or thereabouts” were inserted after such distance, length or reference point (as the case may be).

PART I
—cont.

(3) Any reference in this Act to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Act.

(4) References in this Act to reference points shall be construed as references to National Grid reference points.

Incorporation of
Railways Clauses
Consolidation
Act 1845.
1845 c. 20.

3.—(1) The provisions of the Railways Clauses Consolidation Act 1845, with respect to the temporary occupation of lands near the railway during the construction thereof, so far as the same are applicable for the purposes of and are not inconsistent with, or varied by the provisions of this Act, are hereby incorporated with and form part of this Act and this Act shall be deemed to be the special Act for the purposes of the said incorporated provisions.

(2) In the construction for the purposes of this Act of the provisions of the Railways Clauses Consolidation Act 1845—

the expression “the company” shall mean the Wardens;

the expression “the railway” shall mean the authorised works; and

the expression “the centre of the railway” shall mean the centre line of any of the authorised works.

Application
of Part I of
Act of 1965.

4.—(1) Part I of the Act of 1965 (except sections 4 and 27 thereof and paragraph 3 (3) of Schedule 3 thereto), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Part II of the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981.

1981 c. 67.

(2) In subsection (1) of section 11 of the Act of 1965, as so applied, for the words “fourteen days” there shall be substituted the words “three months”.

1845 c. 18.

(3) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.

PART II

LANDS

Power to acquire
lands.

5. Subject to the provisions of this Act, the Wardens may enter upon, take or use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for or in connection with the construction and maintenance of the authorised works, the construction of the tunnel units and for other the purposes of this Act or for any of those purposes.

Purchase of
rights.

6.—(1) In this section references to the purchase by the Wardens of new rights are references to the purchase of rights to be created in favour of the Wardens.

(2) The Wardens may for the purposes of constructing and using, maintaining, renewing, removing or altering the authorised works, or for the purpose of obtaining access to the authorised works or for the purpose of doing any other thing necessary in connection with the authorised works, purchase compulsorily such new rights as they may require over any of the lands which may be acquired under section 5 (Power to acquire lands) of this Act as well as rights already in existence.

(3) References in this section and Schedule 1 to this Act to rights over land include references to the right to do, or to place and maintain, anything in, on or under land or in the airspace above its surface.

PART II
—cont.

(4) The Act of 1965, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory purchase of rights under subsection (2) above as it applies to the compulsory purchase of land so that, in appropriate contexts, references in the Act of 1965 to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable according to the requirements of the particular context.

(5) Without prejudice to the generality of subsection (4) above in relation to the purchase of rights in pursuance of subsection (2) above—

- (a) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 1 to this Act; and
- (b) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

7.—(1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Wardens after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.

Correction of errors in deposited plans and book of reference.

(2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.

(3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons, and with the proper officer of the Kent County Council and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Wardens to take the land and execute the works in accordance with the certificate.

(4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

8. In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land or new rights under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, works executed or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was at the time of erection, executing or making of the building, works, improvement or alteration, directly or indirectly concerned, if the tribunal are satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Disregard of recent improvements and interests.

PART II
—cont.

Extinction of private rights of way.

9.—(1) All private rights of way over any land that may be acquired compulsorily under this Act shall be extinguished on the acquisition of the land, whether compulsorily or by agreement or on the entry on the land in pursuance of section 11 (1) of the Act of 1965, as applied by this Act, whichever is the sooner.

(2) Any person who suffers loss by the extinguishment of any right under this section shall be entitled to be paid by the Wardens compensation to be determined in case of dispute by the tribunal.

Period for compulsory purchase of lands.

10.—(1) The powers of the Wardens for the compulsory acquisition of lands and new rights under this Act shall not be exercised after 31st December 1992.

(2) The powers of the Wardens for the compulsory acquisition of land or new rights shall for the purposes of this section be deemed to have been exercised if before 31st December 1992, notice to treat has been served in respect of that land or those new rights.

Provision of substituted sites.

11. The power of the Wardens to purchase land by agreement shall include power to purchase land by agreement for the purpose of providing substituted sites or facilities for the owners and occupiers of land which may be acquired under this Act.

Power to reinstate owners or occupiers of property.

12.—(1) The Wardens may enter into and carry into effect an agreement or arrangement with the owner or occupier of any land acquired or to be acquired under this Act with respect to his reinstatement.

(2) Any such agreement may provide for the exchange of land; and for that purpose the Wardens may pay or receive money for equality of exchange.

Agreements with adjoining owners.

13.—(1) The Wardens may enter into and carry into effect agreements with any person being the owner of, or interested in, any land adjoining any portion of the authorised works or of land which may be acquired under this Act with respect to the sale by the Wardens to him (subject to such reservations, restrictions or other provisions as to the Wardens seem fit) of any land not required for the authorised works.

(2) The Wardens may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land required by the Wardens for the purposes of this act or any easement or right so required.

PART III

WORKS

Power to construct works.

14. Subject to the provisions of this Act, the Wardens may, in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works in the borough and in the city hereinafter described with all necessary works and conveniences connected therewith:—

Work No. 1. A tunnel (of the immersed tube type) under the river with approach roads and roundabouts at either end thereof commencing at reference point TQ 7499 6994 and terminating at reference point TQ 7652 6982;

- Work No. 2A Improvements of the road known as Anthonys Way commencing at reference point TQ 7499 6979 and terminating in a roundabout at reference point TQ 7499 6994;
- Work No. 2B Improvements of the road known as Anthonys Way commencing at a roundabout at reference point TQ 7499 6994 and terminating at reference point TQ 7491 7011;
- Work No. 3A Improvements of the road known as Pembroke Road commencing at reference point TQ 7643 6966 and terminating in a roundabout at reference point TQ 7652 6982;
- Work No. 3B Improvements of the road known as Pembroke Road commencing at a roundabout at reference point TQ 7652 6982 and terminating at reference point TQ 7657 6994;
- Work No. 3C A road commencing at a roundabout at reference point TQ 7652 6982 and terminating at reference point TQ 7658 6982;
- Work No. 4 A diversion of a cycletrack and footway, incorporating a bridge across the eastern approach to Work No. 1, commencing at reference point TQ 7642 6966 and terminating at reference point TQ 7656 6994.

15. In executing the authorised works the Wardens may deviate laterally from the lines or situations thereof to any extent within the limits of deviation relating thereto respectively and vertically from the levels thereof defined on the deposited sections to any extent not exceeding two metres upwards and to any extent downwards:

Power to deviate.

Provided that in the execution of so much of the authorised works as is situate under the bed of the river the Wardens shall not alter the level of the top of the tunnel upwards.

16. The Wardens may as part of the authorised works execute and do any of the following works or things within the limits of deviation shown on the deposited plans: —

Subsidiary works.

- (a) open, break up or interfere with any street and make and maintain all such roads, approaches, bridges, subways, roundabouts, lay-byes, lifts, stairs, escalators, ramps, passages, means of ingress or egress, shafts, stagings, buildings, apparatus, plant, machinery, pumping works and temporary fabrication facilities as may be necessary or convenient;
- (b) make junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any existing streets intersected, crossed or interfered with by or contiguous to any of the authorised works and with any existing embankments, aprons, abutments, retaining walls, wing walls, culverts and other works and widen or alter the line or alter the level of any existing street or any existing drain or culvert for the purpose of connecting the same with the authorised works or any of them or with any existing street, or of crossing under or over the same or any other drain or culvert;
- (c) construct and provide all such embankments, aprons, abutments, retaining walls, wing walls, culverts and works of reclamation from the river as may be necessary or convenient for the authorised works;
- (d) execute any works and do any things necessary for the protection of any adjoining land;

PART III
—cont.

1928 c. 32.

Subsidiary works
affecting river.

(e) alter any mains, pipes, wires and other works and apparatus for conveying or transmitting water, gas, electricity or petroleum (as defined in the Petroleum (Consolidation) Act 1928);
together with all necessary or convenient subsidiary and incidental works.

17.—(1) Subject to the provisions of this Act —

- (a) the Wardens may for the purpose of or in connection with the authorised works temporarily alter or interfere with the banks, bed and foreshore of the river and construct, place and maintain within the limits of deviation in the river and in or on the bed, banks and foreshore thereof all such temporary piles, fenders, booms, dolphins, pontoons, caissons, cofferdams, embankments, aprons, abutments, stagings, piers, wharves, walls, fences, drains, stairs, buildings and other works as they may deem necessary or convenient;
- (b) the Wardens may remove any mooring in any case where it appears to them to be necessary or convenient to do so for the purposes of the authorised works;
- (c) the Wardens may occupy and use temporarily so much of the banks, bed and foreshore of the river as may be required for the purposes referred to in paragraph (a) above and as lies within the limits of deviation;
- (d) the Wardens may obstruct navigation to any extent appearing to them to be necessary or convenient for the purpose of the construction or maintenance of any of the authorised works.

(2) Where the Wardens remove any mooring in exercise of their power under paragraph (b) of subsection (1) above, the person to whom the mooring belongs shall be entitled to recover from the Wardens any reasonable relocation costs incurred by that person in consequence of the removal of the mooring.

(3) In subsection (2) above “relocation costs” means, in relation to any mooring removed by the Wardens in exercise of the power mentioned in that subsection —

- (a) any expenses incurred in relocating the mooring in a new situation or in removing it from the new situation and reinstating it in its original situation; and
- (b) any expenses incurred in moving any vessel for which the mooring was used before it was so removed from the original situation of the mooring to a new situation and back again on reinstatement of the mooring in its original situation.

(4) Any difference arising under this section between the Wardens and a person to whom a mooring belongs shall be settled by arbitration.

Power to dredge.

18. Subject to the provisions of this Act, the Wardens may from time to time dredge or deepen or deposit material in the bed of the river for the purposes of or in connection with the construction and maintenance of the authorised works and may for such purposes alter or interfere with the bed, banks, soil or foreshore of the river and may use, appropriate or dispose of any materials dredged by them:

Provided that no materials which have been dredged by the Wardens under this section shall be deposited in any place below the level of mean high-water springs otherwise than in such a position and subject to such conditions and restrictions as may be fixed by the Secretary of State.

19.—(1) For the purpose of executing the authorised works the Wardens may divert the footpath described in column (1) of Schedule 2 to this Act in the county referred to in column (2) and the district referred to in column (3) of the said Schedule in the manner shown on the deposited plans between the points specified in column (4) of the said Schedule as shown on the deposited plans, and subject to the provisions of this Act may stop up and cause to be discontinued as a public highway so much of the said footpath as will be rendered unnecessary by the diversion thereof under the powers of this Act.

(2) (a) Notwithstanding anything in subsection (1) above where the footpath is diverted the existing public highway shall not be stopped up under the powers of this section until the highway authority concerned are satisfied that the diversion has been completed in accordance with their reasonable requirements and is open for public use or, in the case of any difference between the Wardens and the highway authority as to whether the said requirements have been complied with or as to their reasonableness, until the matter in dispute has been referred to and determined by arbitration:

Provided that the Wardens shall not be required under this section to construct or complete any diversion to a greater width or better standard than the footpath for which such diversion is substituted.

(b) Before referring a matter to arbitration under paragraph (a) above, the Wardens shall give to the highway authority seven days' notice of their intention so to do.

(3) As from the date of completion to the satisfaction of the highway authority of such diversion or as from the date of the determination by arbitration of any difference under subsection (2) above (as the case may be), all rights of way over or along the portion of the footpath so stopped up shall be extinguished and the Wardens may appropriate and use, for the purposes of the authorised works, the site and soil thereof so far as they are owners of the land on both sides thereof.

(4) The footpath diverted under the powers of this Act shall be repairable by the authority or person by which or by whom it was repairable before its diversion and be subject to the same public rights of way as were exercisable over the footpath before its diversion.

20.—(1) Subject to the provisions of this Act, the Wardens during and for the purpose of the execution of any of the authorised works may temporarily stop up and divert and interfere with any road or footpath and may for any reasonable time divert the traffic from any such road or footpath and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road or footpath from passing along and using the same.

(2) Reasonable access shall be provided for foot-passengers, with or without animals, bona fide going to or from any such land, house or building.

(3) The powers of this section shall not be exercised with reference to any road or footpath without the consent of the highway authority having powers in relation thereto and in the case of a road or footpath which is vested in any person other than the highway authority, that person, and any such consent may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of the consent) as the highway authority or other person may think fit to impose but shall

PART III
—cont.

Power to divert
footpath.

Temporary
stoppage of roads
and footpaths.

PART III
—cont.

not be unreasonably withheld, and any question whether any such consent is unreasonably withheld, or whether any conditions are reasonable shall be determined by arbitration.

(4) The Wardens shall not exercise the powers of this section with reference to any road unless they have given not less than 21 days' notice in writing of their intention so to do to—

(a) the traffic commissioner in whose area the road is situate; and

(b) the operator over that road of a local service as defined in the Transport Act 1985;

1985 c. 67.

except in a case of emergency when such notice as is practicable shall be given.

Power to pump
water and use
sewers for
removing water.

21.—(1) Subject to the provisions of this Act, the Wardens may pump any water found by them in the construction or maintenance of any of the authorised works and may use for the discharge of any such water the river or any available stream or watercourse or any sewer or drain and may within the limits of deviation for the authorised works lay down, take up and alter conduits, pipes and other works and make convenient connections with the river or any such stream, watercourse, sewer or drain as aforesaid:

Provided that—

(a) the Wardens shall not discharge any water into any sewer or drain vested in or under the control of the services company or the rivers authority except with the consent of that company or authority, as the case may be, and subject to such terms and conditions as they may reasonably impose;

(b) the Wardens shall not make any opening into any such sewer or drain save in accordance with plans approved by, and under the superintendence (if given) of, the services company or the rivers authority and approval of those plans by the services company or the rivers authority shall not be unreasonably withheld; and

1950 c. 39.

(c) no use shall be made by the Wardens in the construction of the authorised works of pumping or other like modes of removing water except where reasonably necessary or in 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 this subsection as if the Wardens were operating undertakers within the meaning of the said section 26.

1989 c. 15.

(2) (a) Section 107 of the Water Act 1989 shall apply to, or to the consequence of, a discharge under the powers of this section into any controlled waters within the meaning given by section 103 of that Act as if this section were not a local statutory provision for the purposes of section 108 (1) (d) of that Act.

1976 c. 70.

(b) In the exercise of their powers under this section the Wardens shall not damage or interfere with the bed of any watercourse forming part of a main river or the banks thereof within the meaning of section 116 of the Land Drainage Act 1976.

(3) The Wardens shall take all such steps as may reasonably be required to secure that any water discharged by them under the powers of this section shall be as free as may be reasonably practicable from any gravel, soil or other solid substance or matter in suspension.

(4) Any difference arising between the Wardens and the services company or, as the case may be, the rivers authority under this section shall be settled by arbitration.

PART III
—cont.

22. The Wardens may light any part of the tunnel and the tunnel approaches or may enter into and carry into effect any agreement with any other body, company or person with respect to lighting the same or any such part.

Lighting of
authorised works.

23. The Wardens may enter into and carry into effect agreements and arrangements with any Government department or local authority or the ports authority or any company, body or person with respect to the construction of any of the authorised works and any such agreement or arrangement may make provision as to the payments to be made by any party thereto to any other party thereto.

Agreements with
Government
departments and
others.

24. The Wardens and the county council may enter into and carry into effect agreements for and relating to the dedication as highways of the authorised works or parts thereof and the adoption as highways maintainable at the public expense of the authorised works or parts thereof and such agreements may make provision as to the payments to be made by the parties thereto and other relevant matters as if the agreements had been entered into under section 38 of the Highways Act 1980.

Agreements with
county council.

1980 c. 66.

25.—(1) The Wardens may form and promote, or join with any other person in forming and promoting, a company for carrying on any activities which the Wardens have power to carry on under this Act.

Formation of
companies, etc.

(2) The Wardens may enter into agreements with any person for the carrying on by that person, whether as agent for the Wardens or otherwise, of any activities which the Wardens have power to carry on and they shall have power to include in any such agreement provision for the disposal of land of the Wardens to that person by way of lease, and for the making of payments by the parties to that agreement, and to enter into any such agreement notwithstanding that it involves the delegation of functions of the Wardens under any enactment.

(3) The Wardens may sell, lease, charge or otherwise dispose of, on such terms and conditions as they think fit, the whole or any part of the tunnel undertaking or the right to operate that undertaking under this Act.

26. For the purposes of maintaining, improving, repairing or renewing the tunnel and the tunnel approaches and any buildings, works, plant, machinery or apparatus connected therewith, or of controlling or securing the safety or convenience of traffic or persons using the tunnel and the tunnel approaches or any part or parts thereof, or otherwise of exercising the functions of the Wardens under this Act, the Wardens may—

Powers for
maintenance,
management,
etc., of tunnel
and tunnel
approaches.

(a) by agreement acquire or take on lease such land;

(b) provide, erect and maintain such buildings, works, vehicles, machinery, plant and apparatus;

(c) employ and pay such officers and servants;

(d) do all such other acts and things;

as may be necessary or convenient for those purposes or any of them.

PART III
—cont.

Closing of
authorised works.

27. The Wardens may at such times and for such periods as they may think proper, close wholly or in part the authorised works or any of them, or any part thereof for the purposes of maintaining, repairing, renewing, draining, cleansing, ventilating, lighting or improving the same, or otherwise for the safety of the public.

Restriction on
use of tunnel.

28.—(1) Notwithstanding anything contained in this Act, it shall not be obligatory upon the Wardens in constructing the tunnel to make provision therein for the accommodation of pedestrian traffic.

(2) The tunnel shall not be available for use by traffic of any of the following classes (that is to say):—

- persons on foot;
- animals (unless conveyed in a vehicle);
- vehicles of any description other than mechanically powered vehicles (with or without trailers):

Provided that the said restriction shall not apply to—

- (a) any person entering or using the tunnel for or in connection with the performance of work, duties or services relating to the tunnel;
- (b) any member of the naval, military or air forces while on duty in the service of the Crown;
- (c) any police officer acting in the execution of his duty;
- (d) any member of a fire brigade or of another emergency service entering or using the tunnel on foot in the execution of his duty;
- (e) any person entering the tunnel in or on a vehicle who, in consequence of a mechanical or other breakdown of such vehicle or in any other case of emergency, uses the tunnel on foot in a reasonable and proper manner having regard to the circumstances of the case.

(3) Any person entering or using, or attempting to enter or use the tunnel in contravention of the restriction imposed by subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In and for the purposes of this section the expression “the tunnel” includes the tunnel approaches and references to “the tunnel” include references to any part of the tunnel or the tunnel approaches, as the case may be.

No sewers, mains
or pipes to be
laid in tunnel or
tunnel
approaches.
1950 c. 39.

29. Notwithstanding anything contained in the Public Utilities Street Works Act 1950, or in any other enactment, no person shall enter upon, break up or interfere with the tunnel or the tunnel approaches or any part thereof or the carriageways or footways thereof or of any part thereof for the purpose of laying down any sewer, drain, main, pipe, wire or other apparatus or executing any work therein, thereon, thereunder or thereover except with the consent of the Wardens in writing and in accordance with such terms and conditions as the Wardens may determine.

Protection of
tunnel, etc.

30.—(1) A person may not without the consent in writing of the Wardens (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, the tunnel, any of the tunnel units, any tunnel approach works or any work constructed in pursuance of section 16 (Subsidiary works) or section 17 (Subsidiary works affecting river) of this Act;

- (b) interfere with the tunnel, any of the tunnel units, any tunnel approach works or any backfilling or scour protection forming part of the authorised works;
- (c) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in constructing or carrying out the authorised works; or
- (d) moor any vessel within 50 metres of the tunnel.

PART III
—cont.

(2) A person who without reasonable excuse contravenes subsection (1) above or fails to comply with any condition attached to a consent given by the Wardens under that subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In this section “tunnel approach works” means works for providing access to the tunnel on either side of the river.

31.—(1) Notwithstanding anything to the contrary in any other enactment or in any rule of law, the Wardens may, in executing or doing in, on, under or over the river any works or things authorised by or under the foregoing provisions of this Part of this Act, close the river or any part thereof to navigation:

Temporary closing of river in connection with works.

Provided that the Wardens shall so execute or do such works or things as to ensure that at any time no more of the river is so closed than is reasonably necessary in all the circumstances, and if it becomes necessary to close the river completely to navigation, the Wardens shall use their best endeavours to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the river and to persons who may be using or intending to use the river for the purposes of trade or business.

(2) Without prejudice to the provisions of section 4 (Application of Part I of Act of 1965) or section 32 (For protection of ports authority) of this Act, neither the Wardens nor the ports authority shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the river under the foregoing subsection.

(3) Save in case of emergency, not less than 14 days before closing the river or any part thereof to navigation the Wardens shall give to the ports authority written notice of their intention in that behalf and shall publish notice of that intention in a newspaper or newspapers circulating in the borough and the city; and in case of emergency they shall give to the ports authority such notice as may be practicable.

(4) Save with the consent of the ports authority, any such closure shall not on any occasion be for longer than a period of 24 hours.

PART IV

PROTECTIVE PROVISIONS

32. The Wardens shall during the progress of such of the authorised works as are in the river or on the bed, shores or banks of the river and, as respects any of the authorised works, so long as any such works are maintained in the river or on the bed, shores or banks of the river—

For protection of ports authority.

- (a) during every night from sunset to sunrise hang out and exhibit and keep burning at or near to the said works such lights; and

PART IV
—cont.

(b) during every day exhibit such marks or beacons; as shall be proper and sufficient for the navigation and safe guidance of vessels and shall take such other steps for preventing so far as may be danger to navigation as shall from time to time be directed by the ports authority. The said lights, marks and beacons shall from time to time be altered by the Wardens in such manner and be of such kind and number and be so placed and used as the ports authority shall approve or direct and, in case the Wardens without reasonable excuse fail so to exhibit and keep burning such lights and to exhibit such marks and beacons, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and on conviction on indictment to a fine.

For protection of ports authority and river users.

33. For the protection of the ports authority and river users the following provisions shall, unless otherwise agreed in writing between the Wardens and the ports authority, have effect:—

(1) In this section—

“construction” includes execution, extension, improvement or renewal, and “construct” and “constructed” have corresponding meanings;

“plans” includes sections, drawings and specifications;

“specified work or operation” means so much of the authorised works or of works connected with or incidental thereto (including works carried out under section 21 (Power to pump water and use sewers for removing water) of this Act) as is in or affects the river and any operations carried out under section 18 (Power to dredge) of this Act or the said section 21; and “specified work” and “specified operation” shall be construed accordingly:

(2) Before commencing any specified work or operation the Wardens shall submit plans thereof to the ports authority for their approval (which approval shall not be unreasonably withheld but may be given subject to reasonable conditions) and shall not commence the same until such plans have been approved by the ports authority:

Provided that if the ports authority do not within 28 days after the receipt of any such plans signify to the Wardens their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved thereof:

(3) (a) Subject to the provisions of this section, a specified work shall not be constructed and a specified operation shall not be carried out except in accordance with such plans as may be so approved or deemed to be approved by the ports authority or settled by arbitration, in accordance with any conditions subject to which approval is so afforded or settled and to the reasonable satisfaction of the ports authority.

(b) Any specified work or operation shall be so constructed or carried out as to ensure that the traffic of the river is not interfered with more than is reasonably necessary and that, subject to the provisions of section 31 (Temporary closing of river in connection with works) of this Act, at all times an unobstructed main navigation channel for the safe passage of vessels is maintained and kept dredged by the Wardens to such depth as the ports authority may reasonably require and to a width of not less than 50 metres:

- (4) The ports authority shall not be liable, in the absence of negligence, for any damage or injury howsoever caused to the tunnel or to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of the ports authority or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof; and it shall be a defence to any proceedings for an offence under subsection (1) (b), (c) or (d) of section 30 (Protection of tunnel, etc.) of this Act arising from the carrying out of such dredging or other operations or works by the ports authority that the same were carried out without negligence:
- (5) The owners and masters of vessels shall not be liable to make good any damage which may be caused to any temporary work or plant placed by the Wardens in the river under the powers of this Act except such as may arise from the wilful act, wilful default or negligence of such owners or masters or their servants or agents:
- (6) Nothing in this Act shall authorise or empower the Wardens, without the previous consent of the ports authority signified under the hand of their secretary, to embank, encroach upon or interfere with any part of the bed, shores or banks of the river except as is expressly authorised by this Act:
- (7) Except so far as may be unavoidable in the construction of the authorised works, the Wardens shall not, without the consent of the ports authority signified under the hand of their secretary, deposit or permit the deposit of any material on or in the river or on the bed, shores or banks of the river; and the Wardens shall at the written request of the ports authority remove any material so unavoidably deposited, as in the reasonable opinion of the ports authority is necessary for facilitating or preserving safety of navigation:
- (8) The Wardens shall allow the authorised representatives of the ports authority to inspect and survey all or any of the authorised works in, on, under or over the river, or immediately adjoining the river, on reasonable written notice (or such notice as may be practicable in case of emergency) in that behalf being given to the Wardens by the ports authority, and shall give all reasonable facilities for so doing:
- (9) The Wardens shall not, except for the purpose of constructing the tunnel, remove any gravel, soil or other material from the bed, shores or banks of the river without the previous consent of the ports authority signified in writing under the hand of their secretary, but nothing in this paragraph shall prevent the use by the Wardens of any gravel, soil or other material so removed for the purposes of the construction of other authorised works:
- (10) After the purpose for which any temporary structure placed in the river in connection with the construction of any of the works has been accomplished, the Wardens shall, with all reasonable dispatch, and in any case after reasonable notice from the ports authority requiring them to do so, remove any such temporary structure or any materials for the same which may have been placed in the river by the Wardens and, on their failing to do so within 30 days after receipt of such notice, the ports authority may remove the same at the expense of the Wardens; and the

PART IV
—cont.

PART IV
—cont.

amount of any expense reasonably so incurred shall be a debt due from the Wardens to the ports authority and shall be recoverable by the ports authority in any court of competent jurisdiction:

(11) From the time when the construction of the specified works is commenced the Wardens shall proceed with such works with all reasonable diligence and without unreasonable delay until all of the specified works are completed and all temporary works removed from the river:

(12) (a) The Wardens shall consult with the ports authority as to any pile, stump or other obstruction in the river which becomes exposed in consequence of the authorised works and shall remove from the river any such pile, stump or other obstruction which in the opinion of the ports authority is a hazard to navigation or, if it is not reasonably practicable to remove it, the same shall be cut off at such level below the bed of the river (not being more than two metres below bed level in the main navigation channel or one metre so below elsewhere in the river) as the ports authority may direct;

(b) If the Wardens fail to remove from the river any such pile, stump or other obstruction within 28 days after receipt of written notice from the ports authority requiring the removal, the ports authority may carry out the removal and recover their expenses from the Wardens:

(13) If—

(a) any work comprised in the authorised works is abandoned or out of repair and is either wholly or partially in the river below mean high-water springs, or is in such other position that it is or is likely to become a danger to or interfere with navigation or other public rights in the river; and

(b) the ports authority by written notice require the Wardens to repair the work or (if the Wardens no longer require the work) to abate and remove the work or any part of it and restore the site to its former condition; and

(c) the Wardens fail to comply with the notice within 28 days after the receipt of it;

the ports authority may abate and remove the work or any part of it and restore the site to its former condition and may recover their expenses from the Wardens:

(14) The ports authority may recover from the Wardens any expenses (including a proper proportion of the overhead charges of the ports authority) which the ports authority incur—

(a) arising from the approval of plans and the inspection of the construction or carrying out of any specified work or operation;

(b) by reason of any act or omission of the Wardens, or of any person in their employ, or of their contractors or workmen whilst engaged upon any specified work or operation;

(c) in dredging away any accumulation of mud or silt consequent upon the execution or maintenance of the authorised works;

PART IV
—cont.

(d) in obtaining and depositing in the river such material as is necessary in the opinion of the ports authority to protect river users and other works in the river from the effects of scouring of the river bed consequent upon the execution or maintenance of the authorised works;

(e) in altering any mooring in any way which in the opinion of the ports authority may be rendered necessary or desirable by reason of the execution or maintenance of the authorised works;

and the Wardens shall indemnify the ports authority from and against all claims and demands arising out of such construction or carrying out, failure or act or omission as aforesaid; but the ports authority shall as soon as reasonably practicable give to the Wardens notice of any claim or demand which is one for which the Wardens may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Wardens:

(15) Nothing in this Act shall authorise the Wardens in the exercise of any powers of this Act to discharge or allow to escape either directly or indirectly into the river or its tributaries any poisonous, noxious or polluting matter in solution or in suspension or otherwise:

(16) Except as is expressly provided by this Act, nothing in this Act shall extend to, or be construed to extend to, prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the ports authority or to prohibit, defeat, alter or diminish any power, authority or jurisdiction which at the time of the passing of this Act the ports authority did or might lawfully claim, use or exercise under and by virtue of the Medway Ports Authority Act 1973:

1973 c. xxi.

(17) Any difference which may arise between the Wardens and the ports authority under this section (other than paragraphs (6) and (15) thereof or a difference as to the meaning or construction of this section) shall be settled by arbitration.

34. The Wardens shall not by virtue of this Act interfere with any highway maintainable at the public expense without the consent in writing of the county council which consent may be given subject to such reasonable conditions as they think fit.

For protection of highway authority.

35. For the protection of the undertakers the following provisions shall, unless otherwise agreed in writing between the Wardens and the undertakers, have effect:—

For protection of gas, electricity and water undertakers.

(1) In this section unless the subject or context otherwise requires—

“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 (within the meaning of Part I of the Electricity Act 1989) belonging to or maintained by such undertakers; or

1989 c. 29.

(b) in the case of gas or water undertakers any mains, pipes or other apparatus belonging to the undertakers or for the maintenance of which they are responsible;

PART IV
—cont.1986 c. 44.
1989 c. 29

and includes any structure for the lodging therein of apparatus;
“in” in a context referring to apparatus includes under, over, across, along or upon;

“plan” includes a section and description;

“specified work” means any work or thing done under powers conferred by this Act;

“the undertakers” means a public gas supplier within the meaning of Part I of the Gas Act 1986, a person authorised by a licence under Part I of the Electricity Act 1989 to transmit or supply electricity and the services company or any of them, as the case may be:

- (2) Notwithstanding anything in this Act or shown on the deposited plans, the Wardens shall not, under the powers of this Act, acquire any apparatus otherwise than by agreement:
- (3) The powers conferred on the Wardens by paragraph (e) of section 16 (Subsidiary works) of this Act to alter apparatus shall not be exercised in respect of any apparatus otherwise than in accordance with the provisions of this section:
- (4) If the Wardens in the exercise of the powers of this Act acquire any interest in or use any land in which any apparatus is placed, that apparatus shall not be removed nor shall any right of the undertakers to use, maintain, repair, renew or inspect any apparatus in that land be extinguished until adequate alternative apparatus has been laid or constructed and is in operation to the reasonable satisfaction of the undertakers:
- (5) (a) If the Wardens, for the purpose of the execution of any specified work, require the removal of any apparatus, they shall give to the undertakers written notice of such requirement with a plan of the proposed work, and if it is agreed between the Wardens and the undertakers or, in default of agreement, determined by arbitration that the removal of the apparatus is reasonably required and that it should be removed the following provisions of this paragraph shall have effect;
 - (b) If it is agreed or determined by arbitration in accordance with sub-paragraph (a) of this paragraph that any apparatus should be removed or if in consequence of the execution of any specified work the undertakers shall reasonably require to remove any apparatus, the Wardens shall, if practicable, afford to the undertakers the necessary facilities and rights for the laying or construction of adequate alternative apparatus in other lands of the Wardens 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 laid or constructed elsewhere than in other lands of the Wardens and the Wardens 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 laid or constructed the undertakers shall on receipt of a written notice to that effect from the Wardens, forthwith use their best endeavours to obtain the necessary facilities and rights:
- (6) (a) Any alternative apparatus to be laid or constructed in lands of the Wardens in pursuance of paragraph (5) of this section shall be laid or constructed in such manner and in such line or situation as may be agreed between the undertakers and the Wardens or, in default of agreement, settled by arbitration:

- (b) The undertakers shall, after the manner of laying or construction and the line and situation of any alternative apparatus has 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 (5) of this section, proceed with all reasonable dispatch to lay or construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required to be removed under the provisions of this section and, in default, the Wardens may remove the apparatus:
- (7) Notwithstanding anything in paragraph (6) of this section, if the Wardens give notice in writing to the undertakers that they desire themselves to execute any part of the work necessary in connection with the laying or construction of the alternative apparatus in, or the removal of the apparatus required to be removed from, any lands of the Wardens, such work, instead of being executed by the undertakers, shall be executed by the Wardens 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 Wardens to execute the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around the apparatus extending (where the apparatus is laid in a trench) within 300 millimetres (12 inches) above the apparatus:

- (8) Where in accordance with the provisions of this section the Wardens afford to the undertakers facilities and rights for the laying or construction, maintenance, repair, renewal and inspection in lands of the Wardens 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 Wardens 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 across or through a specified work the arbitrator shall —

(i) give effect to all reasonable requirements of the Wardens for ensuring the safety and efficient operation of the specified work and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such work; and

(ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus laid or constructed through the lands of the Wardens for which the alternative apparatus is to be substituted;

(b) if the facilities and rights to be afforded by the Wardens 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, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the

PART IV
—cont.

arbitrator shall make such provision for the payment of compensation to or by the Wardens by or to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:

- (9) (a) Not less than 28 days before commencing to execute any specified work which is near to, or is likely to affect, any apparatus the removal of which has not been required by the Wardens under paragraph (5) of this section, the Wardens shall submit to the undertakers a plan of the work to be executed;
- (b) Such work shall be executed only in accordance with the plan 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 work:

Provided that —

- (i) if the undertakers, within 14 days after the submission to them of any such plan, shall, in consequence of the work proposed by the Wardens, reasonably require the removal of any apparatus and give written notice to the Wardens 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 Wardens under paragraph (5) thereof; and
- (ii) nothing in this sub-paragraph shall preclude the Wardens 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 work, a new plan in lieu of the plan previously submitted and thereupon the provisions of this paragraph shall apply to and in respect of such new plan;
- (c) The wardens shall not be required to comply with sub-paragraph (a) of this paragraph in a case of emergency but, in such a case, they shall give to the undertakers notice and a plan of the work as soon as reasonably practicable and thereafter shall comply with sub-paragraph (b) of this paragraph so far as reasonably practicable in the circumstances:
- (10) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed, the Wardens shall provide an alternative means of access to such apparatus:
- (11) The Wardens shall repay to the undertakers the reasonable costs, charges and expenses incurred by the undertakers in or in connection with —
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this section;
- (b) the cutting off of any apparatus from any other apparatus;
- (c) the superintendence, watching or inspection of works in accordance with paragraphs (7) or (9) (b) of this section; and
- (d) any other work or thing reasonably necessary in consequence of the exercise by the Wardens of any of the powers of this Act:

Provided that subsections (3) and (4) of section 23 of the Public Utilities Street Works Act 1950 shall so far as applicable extend and apply to any payment to be made by the Wardens under this

paragraph as if the Wardens were the promoting authority and works hereinbefore in this paragraph mentioned were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or settled by arbitration under section 35 (For protection of gas, electricity and water undertakers) of the Medway Tunnel Act 1990":

- (12) If by reason or in consequence of the execution, user or failure of any of the specified works, or any subsidence resulting from any of those works, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the undertakers or any interruption in the supply of gas, electricity or water, as the case may be, by or to the undertakers shall be caused, the Wardens shall bear and pay the cost reasonably incurred by the undertakers in making good such damage, or in restoring the supply of gas, electricity or water 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 Wardens with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the undertakers or their contractors or workmen;

(ii) the undertakers shall give to the Wardens reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Wardens:

- (13) The temporary stopping up or diversion of any road or footpath under the powers of section 20 (Temporary stoppage of roads and footpaths) of this Act shall not prevent the undertakers from obtaining access to any apparatus nor prejudice or affect any right of the undertakers —

(a) to lay, erect, maintain, inspect, renew or remove any apparatus in the road or footpath; or

(b) for the purposes of such laying, erection, maintenance, inspection, renewal or removal to enter upon or break open that road or footpath:

- (14) (a) Any difference arising between the Wardens and the undertakers under this section shall be settled by arbitration;

(b) In settling any difference under this section the arbitrator shall have regard to any duty or obligation which the undertakers may be under in respect of any apparatus and may, if he thinks fit, require the Wardens to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with any purposes for which the apparatus is used.

PART IV
—cont.For protection of
services
company.

1936 c. 49.

36. For the protection of the services company, the following provisions shall, unless otherwise agreed in writing between the Wardens and the services company, have effect:—

(1) In this section—

“new, altered or substituted works” include any works required for the protection of any sewer of the services company;

“sewer” and “sewer of the services company” mean a sewer within the meaning of the Public Health Act 1936, and include—

(a) a public sewer and any sewer into which the services company have a right to drain; and

(b) every storm outfall from the Whitewall sewage works of the services company;

and any manholes, chambers, ventilating shafts, pumps or other accessories belonging to or forming part of any such sewer or storm outfall;

“specified works” means any part of the authorised works which will or may be situated within 5 metres measured in any direction of any sewer vested in the services company:

(2) Wherever in this section provision is made with respect to the approval or consent of the services company such approval shall be in writing, but shall not be unreasonably withheld:

(3) The Wardens shall not commence the construction of any part of the specified works until they have given to the services company not less than 28 days’ notice in writing of their intention to do so with plans as described in paragraph (9) below (in this section referred to as “the said plans”) for their reasonable approval:

Provided that, if within 28 days after the submission of the said plans the services company have not approved or disapproved them, they shall be deemed to have approved the said plans as submitted:

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

(5) The specified works and all such new, altered or substituted works—

(a) shall be constructed in accordance with such plans and sections as may be approved or deemed to be approved by the services company as aforesaid or settled by arbitration, subject however to any modification of those plans and sections from time to time agreed upon between the Wardens and the services company; and

(b) shall be constructed to the reasonable satisfaction of the services company who shall be given reasonable notice of the date and time on and at which any new, altered or substituted works are to be commenced;

(6) All new, altered or substituted works shall, where so required by the services company, be done by the services company, or under the direction, superintendence and control of an officer of the

services company duly appointed for the purpose at the cost of the Wardens, and all costs, charges and expenses reasonably incurred by the services company 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 services company by the Wardens:

- (7) When any new, altered or substituted works shall be completed by, or at the cost of, the Wardens under the provisions of this section, the same shall thereafter be as fully and completely under the direction, jurisdiction and control of the services company as any sewers or works now or hereafter may be:
- (8) It shall not be lawful for the Wardens, without the consent of the services company, in the exercise of the powers of section 11 (3) of the Act of 1965 as applied by this Act, to make any trial holes which interfere with any sewer:
- (9) The plans to be submitted to the services 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, the specified works are to be constructed and shall so far as is practicable accurately describe the position of all sewers of the services company within the limits of deviation (for which purpose the services company shall allow the Wardens access to plans in their possession and to any of their sewers in order to enable the Wardens to obtain reliable information) and shall comprise detailed drawings of every alteration which the Wardens may propose to make in any such sewer:
- (10) The Wardens shall be liable to make good, or, if the services company so decide, to repay any expense reasonably incurred by the services company in making good, damage caused by, or resulting from, the construction of the specified works to any sewers or to any other drains or works vested in the services company:
- (11) If the Wardens in the construction of the specified works or any new, altered or substituted works provided in accordance with this section, damage or, without the consent of the services company, alter or in any way interfere with any existing sewer of the services company, the Wardens shall—
 - (a) pay to the services company any additional expense which may be reasonably incurred by the services company in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the said construction; and
 - (b) give to the services company full, free and uninterrupted access at all times to any such new, altered or substituted sewer and every reasonable facility for the inspection, maintenance, alteration and repair thereof:
- (12) (a) The temporary stopping up or diversion of any road or footpath under the powers of section 20 (Temporary stoppage of roads and footpaths) of this Act shall not prevent the services company from obtaining access to any sewer nor prejudice or affect any right of the services company—
 - (i) to lay, erect, maintain, inspect, renew or remove any sewer in the road or footpath; or

PART IV
—cont.

(ii) for the purposes of such laying, erection, maintenance, inspection, renewal or removal to enter upon or break open that road or footpath;

- (b) If in consequence of the exercise of the powers of this Act the access to any sewer is materially obstructed, the Wardens shall provide an alternative means of access to such sewer:
- (13) It shall be lawful for the proper officer of the services company at any reasonable time, on giving to the Wardens such notice as may in the circumstances be reasonable, to enter upon and inspect the specified works or any other works constructed under the powers of this section:
- (14) The approval by the services company of any plans, or the superintendence by them of any work, under the provisions of this or the last foregoing section shall not exonerate the Wardens from any liability, or affect any claim for damages, under this section or otherwise:
- (15) Any difference arising between the Wardens and the services company under this section (other than a difference as to its meaning or construction) shall be settled by arbitration.

For protection of
rivers authority.

37. For the protection of the rivers authority, the following provisions shall, unless otherwise agreed in writing between the Wardens and the rivers authority, have effect: —

- (1) Wherever in this section provision is made with respect to the approval or consent of the rivers authority such approval or consent shall be in writing and shall not be unreasonably withheld:
- (2) (a) In the design and construction of the tunnel the Wardens shall have regard to the matters mentioned in paragraph (3) (a) below and, in consultation with the rivers authority, shall so design and construct the tunnel as to ensure by all reasonably practicable means that saline or other contaminating intrusion into water resources in underground strata does not occur by reason of such construction;
- (b) The Wardens shall not commence the construction of any part of the tunnel until they have given to the rivers authority not less than 56 days' notice in writing of their intention to do so with detailed plans, drawings, sections, specifications and all relevant particulars describing the exact position and manner in which, and the level at which, the works for the tunnel or such part thereof are to be constructed (hereinafter in this section called "the said plans") for their reasonable approval as respects the matters specified in paragraph (3) below; and the said works shall be constructed only in accordance with the said plans as so approved or settled by arbitration:

Provided that if within 56 days after the submission of the said plans the rivers authority have not approved or disapproved them, they shall be deemed to have approved the said plans as submitted:

- (3) (a) The matters to which the rivers authority may have regard in considering the said plans relate to the avoidance or (if avoidance is not reasonably practicable) the minimising of contamination of water resources in underground strata (within the meanings given to those two expressions in the Water Resources Act 1963) by reason of construction of the tunnel; and in approving the said plans the rivers authority may require the taking of such measures

in or in connection with the construction of the tunnel, whether as to methods of working, additional or protective works or otherwise, as appear to the rivers authority to be reasonably required for such avoidance or minimising of contamination;

- (b) The rivers authority shall be entitled to watch, superintend and inspect the carrying out of works and measures required under sub-paragraph (a) above:
- (4) (a) For the purpose of monitoring and recording the levels and quality of water in underground strata in the vicinity of the tunnel, the Wardens shall provide and maintain in a reasonably sufficient number of positions approved by the rivers authority such apparatus for the continuous monitoring of those water levels and quality of water as may be so approved and shall permit the rivers authority to have access at all reasonable times to the apparatus and to all records deriving from the apparatus;
- (b) The Wardens shall at the end of each month send to the rivers authority one copy of each of the records made by the apparatus required for the purposes of sub-paragraph (a) above:
- (5) The Wardens shall repay to the rivers authority the reasonable costs, charges and expenses incurred by the rivers authority in or in connection with the approval of plans under this section and the watching, superintendence and inspection of works and measures required under paragraph (3) (a) above:
- (6) The approval by the rivers authority of any plans, or the superintendence by them of any works or measures, under the provisions of this section shall not exonerate the Wardens from any liability, or affect any claim for damages, under this section or otherwise:
- (7) Any difference arising between the Wardens and the rivers authority under this section (other than a difference as to its meaning or construction) shall be settled by arbitration.

PART IV
—cont.

PART V

MISCELLANEOUS AND GENERAL

- 38.—(1) The Wardens may make and enforce byelaws for —
- (a) the regulation, control and protection of the tunnel and the tunnel approaches or of any part of the tunnel or the tunnel approaches and of persons resorting to or using the same;
 - (b) the management, regulation, direction and control of traffic of every description using the tunnel or the tunnel approaches or any part of the tunnel or the tunnel approaches;
 - (c) securing the safe custody, redelivery or disposal of any property left or abandoned in the tunnel or on the tunnel approaches or in any premises used for the purposes of, or in connection with, the tunnel or the tunnel approaches and for fixing the charges to be made by the Wardens in respect thereof.
- (2) Without prejudice to the generality of subsection (1) above byelaws made under this section may —
- (a) fix maximum and minimum speed limits, or either of such speed limits, to be observed by motor vehicles whilst passing through the tunnel or along the tunnel approaches or through or along part of the tunnel or the tunnel approaches;

Byelaws.

PART V
—cont.

(b) prohibit the passage of particular traffic through the tunnel or along the tunnel approaches or through or along any part of the tunnel or the tunnel approaches either generally or during particular hours.

(3) The byelaws which may from time to time be made by the Wardens in pursuance of this section may provide for the imposition on summary conviction for a contravention of any of the byelaws of a fine not exceeding level 3 on the standard scale.

1972 c. 70.

(4) Subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972, shall apply to all byelaws made by the Wardens in respect of the tunnel undertaking as if they were a local authority and the clerk of the Wardens were the proper officer of the local authority, and all fines imposed for the breach of any such byelaws shall be recoverable in manner provided by that Act for the recovery of fines.

(5) The said section 236, in its application to byelaws made under subsection (1) above, shall have effect as if in subsection (7) of that section, after the word “confirm” where it firstly occurs in that subsection the words “with or without modification” were inserted:

Provided that where the confirming authority proposes to make a modification which appears to him to be substantial he shall inform the Wardens and require them to take any steps he thinks necessary for informing persons likely to be concerned with that modification and shall not confirm the byelaws until there has elapsed such period as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Wardens and by other persons who have been informed of it.

(6) The confirming authority for the purposes of the said section 236 shall be the Secretary of State.

1978 c. 30.

(7) Without prejudice to the operation of section 18 of the Interpretation Act 1978 nothing in any byelaw made by the Wardens under this section shall preclude the bringing of proceedings against, and conviction of, any person with respect to an offence under the Road Traffic Regulation Act 1984 of driving a motor vehicle at a speed exceeding a statutory speed limit.

1984 c. 27.

Inquiries.

39. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval, or the making of any order, or the confirmation of any byelaw under this Act and section 250 of the Local Government Act 1972 shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Wardens were a local authority.

Recovery of penalties, etc.

40. Save as otherwise by this Act expressly provided, all offences against this Act and all fines, forfeitures, costs and expenses imposed or recoverable under this Act or any byelaw made in pursuance thereof may be prosecuted or recovered in a summary manner.

Judges and justices not to be disqualified.

41. A judge of any court or a justice of the peace shall not be disqualified from acting in cases arising under or in relation to this Act, or any byelaw made thereunder, by reason only of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or be benefited by any rate, fund or community charge out of which any expenses of the county council are to be defrayed.

42. A person who intentionally obstructs any person acting in the execution of this Act or any byelaw made under this Act or of any order, regulation, prescription, notice or warrant made or issued under this Act shall in any case in which no other provision is made by this Act be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART V
—cont.

Penalty for obstructing execution of Act.

43. Where under this Act any dispute or difference is to be referred to or determined by arbitration, then unless otherwise provided, such dispute or difference shall be referred to, and determined by, a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

Arbitration.

44.—(1) Nothing in this Act affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing in this Act authorises the Wardens to take, use, enter upon 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 the sea or of any river, channel, creek, bay or estuary)—

Crown rights.

(a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

45. Nothing in this Act shall prejudice or affect the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1976 or any byelaw or regulation thereunder.

Saving for Land Drainage Act 1976.
1976 c. 70.

46. In their application to development authorised by Part III (Works) of this Act, Article 3 of, and Part 11 in Schedule 2 to, the Town and Country Planning General Development Order 1988 shall have effect as if the authority to develop given by this Act were limited to such development begun within 10 years after the passing of this Act.

Saving for town and country planning.
S.I. 1988/1813.

SCHEDULES

SCHEDULE 1

Section 6.

ADAPTATION OF PART I OF ACT OF 1965

1. In the Act of 1965 (hereafter in this Schedule referred to as "the Act") for section 7 (which relates to compensation) there shall be substituted the following:—

"7.—(1) In assessing the compensation to be paid by the Wardens under this Act regard shall be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.

1973 c. 26.

(2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words 'land is acquired or taken' there shall be substituted the words 'a right over land is purchased' and for the words 'acquired or taken from him' there shall be substituted the words 'over which the right is exercisable'."

2. For section 8 of the Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following:—

"8.—(1) Where in consequence of the service on a person in pursuance of section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (hereafter in this subsection referred to as 'the relevant land')—

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (hereafter in this section referred to as 'the Tribunal'); and

(b) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or

(ii) where the land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the Medway Tunnel Act 1990 shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the Tribunal directs.

(2) Any question as to the extent of the land in which the Medway Tunnel Act 1990 is deemed to authorise the purchase of an interest by virtue of the preceding subsection shall be determined by the Tribunal.

(3) Where, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section, the Medway Tunnel Act 1990 is deemed by virtue of that subsection to authorise

the purchase of an interest in land, the Wardens may, at any time within the period of six weeks, beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made but nothing in this subsection prejudices any other power of the Wardens to withdraw the notice.

SCH. 1
—cont.

(4) The modifications subject to which subsection (1) of section 58 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to the duty of the Tribunal in determining whether it is satisfied as mentioned in subsection (1) of this section, are that at the beginning of paragraphs (a) and (b) there shall be inserted the words 'a right over', for the word 'severance', there shall be substituted the words 'right on the whole of the house, building or manufactory or of the house and the park or garden' and for the words 'part proposed' and 'part is' there shall be substituted respectively the words 'rights proposed' and 'right is'."

1973 c. 26.

3. The following provisions of the Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely: —

- section 9 (4) (failure of owners to convey);
- paragraph 10 (3) of Schedule 1 (owners under incapacity);
- paragraph 2 (3) of Schedule 2 (absent and untraced owners); and
- paragraphs 2 (3) and 7 (2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the Wardens.

4. Section 11 of the Act (powers of entry) shall be so modified as to secure that, as from the date on which the Wardens have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff's warrant in the event of obstruction) of the Act shall be modified correspondingly.

5. Section 20 of the Act (compensation for short term tenants) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

6. Section 22 of the Act (protection of acquiring authority's possession of land where by inadvertance an interest in the land has not been purchased) shall be so modified as to enable the Wardens, in circumstances corresponding to those referred to in that section to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation.

Section 19.

SCHEDULE 2

FOOTPATH TO BE DIVERTED

(1) Footpath	(2) County	(3) District	(4) Letters on deposited plans showing extent of stopping up
No. on map prepared under section 55 of the Wildlife and Countryside Act 1981.			
RS 121	Kent.	Rochester upon Medway.	A1 to A2.

1981 c. 69.

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Medway Tunnel Act 1990

CHAPTER xxii

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Citation.
2. Interpretation.
3. Incorporation of Railways Clauses Consolidation Act 1845.
4. Application of Part I of Act of 1965.

PART II

LANDS

5. Power to acquire lands.
6. Purchase of rights.
7. Correction of errors in deposited plans and book of reference.
8. Disregard of recent improvements and interests.
9. Extinction of private rights of way.
10. Period for compulsory purchase of lands.
11. Provision of substituted sites.
12. Power to reinstate owners or occupiers of property.
13. Agreements with adjoining owners.

PART III

WORKS

Section

14. Power to construct works.
15. Power to deviate.
16. Subsidiary works.
17. Subsidiary works affecting river.
18. Power to dredge.
19. Power to divert footpath.
20. Temporary stoppage of roads and footpaths.
21. Power to pump water and use sewers for removing water.
22. Lighting of authorised works.
23. Agreements with Government departments and others.
24. Agreements with county council.
25. Formation of companies, etc.
26. Powers for maintenance, management, etc., of tunnel and tunnel approaches.
27. Closing of authorised works.
28. Restriction on use of tunnel.
29. No sewers, mains or pipes to be laid in tunnel or tunnel approaches.
30. Protection of tunnel, etc.
31. Temporary closing of river in connection with works.

PART IV

PROTECTIVE PROVISIONS

32. For protection of ports authority.
33. For protection of ports authority and river users.
34. For protection of highway authority.
35. For protection of gas, electricity and water undertakers.
36. For protection of services company.
37. For protection of rivers authority.

PART V

MISCELLANEOUS AND GENERAL

38. Byelaws.
39. Inquiries.
40. Recovery of penalties, etc.
41. Judges and justices not to be disqualified.
42. Penalty for obstructing execution of Act.
43. Arbitration.
44. Crown rights.
45. Saving for Land Drainage Act 1976.
46. Saving for town and country planning.

SCHEDULES:

- Schedule 1 —Adaptation of Part I of Act of 1965.
Schedule 2 —Footpath to be diverted.