



# Heathrow Express Railway Act 1991

## 1991 CHAPTER vii

### PART IV

#### PROTECTIVE PROVISIONS

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

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

(1) In this section—

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

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

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

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

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

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

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

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

- (4) If within 56 days after such plans have been furnished to the company, the company shall give notice to the appropriate authority that the company desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the safe operation of the company's railways, then, if the appropriate authority desire such part of the specified works to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the appropriate authority in accordance with approved plans:
- (5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of designated property and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch and the appropriate authority shall not commence the construction of the specified works until the engineer shall have notified the appropriate authority that the protective works have been completed:
- (6) The appropriate authority shall give to the engineer not less than 28 days' notice of their intention to commence the construction of any of the specified works and also, except in emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with designated property:
- (7) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with approved plans;
  - (b) under the competent supervision (if given) and to the reasonable satisfaction of the engineer; and
  - (c) in such manner as to cause—
    - (i) as little damage to designated property as may be; and
    - (ii) as little interference as may be with the conduct of traffic on any railway of the company and the use by passengers of designated property;

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

Provided that nothing in this paragraph shall impose any liability on the appropriate authority with respect to any damage, costs, expenses or loss

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which is attributable to the act, neglect or default of the company or their servants, contractors or agents:

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

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- (b) by reason of any act or omission of the appropriate authority or of any persons in their employ or of their contractors or others whilst engaged upon the construction of the specified works;

and the appropriate authority shall effectively indemnify and hold harmless the company from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the company on behalf of the appropriate authority or in accordance with approved plans, or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the company or of any person in their employ or of their contractors or agents whilst engaged upon the construction of the specified works) excuse the appropriate authority from any liability under the provisions of this paragraph:

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

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