



Aire and Calder Navigation Act 1992

1992 CHAPTER iv

An Act to provide for restoration and diversion of a section of the river Aire and of the Aire and Calder Navigation within the St. Aidan's Remainder Opencast Site of the British Coal Corporation; to authorise the Corporation to construct works and to acquire lands; to confer further powers on the Corporation; and for other purposes. [16th March 1992]

Whereas the British Coal Corporation (hereinafter called "the Corporation") were established with the then title of the National Coal Board by sections 1 and 2 of the Coal Industry Nationalisation Act 1946, with the duties of working and getting coal in Great Britain, securing the efficient development of the coal-mining industry and making supplies of coal available as best to further the public interest:

And whereas in pursuance of the St. Aidan's Extension Authorisation 1980 granted under section 1 of the Opencast Coal Act 1958 and in pursuance of planning permission deemed to be granted by virtue of a direction of the Secretary of State under section 2 of that Act, the Corporation from 1981 worked the St. Aidan's Extension Site (hereinafter called "the opencast site"):

And whereas the opencast site lies near to the river Aire and to the Aire and Calder Navigation of the British Waterways Board, which is one of the commercial waterways of the Board within the meaning of Part VII of the Transport Act 1968:

And whereas in March 1988 the river Aire adjacent to Lemonroyd Lock and the opencast site burst its banks and filled the opencast site with some four billion gallons of water to a depth of some 70 metres, so that working of the site was suspended:

And whereas it is expedient to remedy the situation and to provide for the future use of the lands affected by reconstructing the course of the river Aire and the Aire and Calder Navigation, pumping out the void on the opencast site, completion of opencast operations at the site and its landscaping reinstatement:

And whereas for those purposes it is expedient that the Corporation should be empowered to construct the diversion of the navigation and other works, which they are by this Act authorised to construct and to acquire lands and easements for such works and otherwise:

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And whereas it is expedient that the other provisions in this Act should be enacted:

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

And whereas plans and sections showing the lines, situations and levels of the works authorised by this Act, and a book of reference to such plans containing the names of the owners and lessees, or reputed owners and 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 Leeds City 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 Citation

This Act may be cited as the Aire and Calder Navigation Act 1992.

2 Interpretation

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

“the Act of 1961” means the Land Compensation Act 1961;

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

“the Act of 1991” means the Water Resources Act 1991;

“the Board” means the British Waterways Board;

“the Corporation” means the British Coal Corporation;

“the definitive map” means the definitive map for the area forming part of the definitive map and statement as defined by section 53 of the Wildlife and Countryside Act 1981;

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“the new navigation” means Work No. 2, Work No. 12, Work No. 12A and so much of Work No. 1 as is downstream of its junction with Work No. 2 together with all works and conveniences connected therewith;

“the navigation” means the Aire and Calder Navigation of the Board;

“the railways board” means the British Railways Board;

“the river” means the river Aire;

“the Rivers Authority” means the National Rivers Authority;

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“the superseded length” means so much of the navigation and its facilities as is not required in consequence of the construction of the new navigation;

“the transfer date” means the date agreed or determined under section 41 (New navigation to be commercial waterway, etc.) of this Act;

“the tribunal” means the Lands Tribunal;

“the works” means the works authorised by this Act and includes those works as altered, replaced or re-laid under subsection (3) of section 5 (Power to make works) of this Act.

- (2) References in this Act to reference points shall be construed as references to Ordnance Survey National Grid reference points.
- (3) All areas, points, directions, distances and lengths stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such area, point, direction, distance and length and distances between points on a waterway shall be taken to be measured along the centre line of the channel of the waterway.
- (4) Unless the context otherwise requires, any reference in this Act to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act.
- (5) References in this Act to points identified by letters shall be construed as references to the points so lettered on the deposited plans.

3 Incorporation of Railways Clauses Consolidation Act 1845

- (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 are, so far as the same are applicable for the purposes and are not inconsistent with or varied by the provisions of this Act, incorporated with and form part of this Act.
- (2) For the purposes of the said provisions as so incorporated, “the special Act” means this Act, “the railway” means the works, “the centre of the railway” means the centre lines of the works and “the company” means the Corporation.
- (3) Wherever the said provisions as originally enacted confer powers exercisable within the period by the special Act limited for the completion of the railway, those provisions as incorporated with this Act shall be construed as though their powers were expressed to be exercisable within a period of five years from the commencement of the construction of the work or part of a work in relation to which the powers are required to be exercised.

4 Application of Part I of Compulsory Purchase Act 1965

- (1) Part I of the Act of 1965 (except section 4 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.
- (2) In section 11 (1) of the Act of 1965 (which empowers the acquiring authority to enter on and take possession of land the subject of a notice to treat after giving not less than

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14 days' notice) as so applied, for the words “fourteen days” there shall be substituted the words “three months”.

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

PART II

WORKS

5 Power to make works

- (1) Subject to the provisions of this Act, the Corporation may, in the lines or situations shown on the deposited plans and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works specified in Part I of Schedule 1 to this Act with all necessary works and conveniences connected therewith.
- (2) Notwithstanding anything to the contrary in this Act or shown on the deposited plans or the deposited sections, but without prejudice to the provisions of section 9 (Power to deviate) of this Act the Corporation may, subject to the approval of the Secretary of State, construct the whole or any part of the works within the limits of deviation in accordance with dimensions and a description other than the dimensions and descriptions shown on the deposited plans and the deposited sections or specified in Schedule 1 to this Act.
- (3) Subject to the provisions of this Act, the Corporation may within the limits of deviation from time to time alter, replace or re-lay temporarily or permanently the works.

6 Further works and powers

- (1) Subject to the provisions of this Act (and, in so far as the same are shown on the deposited plans and sections, in the lines or situations and according to the levels as shown) the Corporation may make and maintain the further works and facilities described in Part II of Schedule 1 to this Act with all necessary works and conveniences connected therewith.
- (2) With the consent in writing of the highway authority the route of any new highway to be provided in pursuance of this Act may, on the application of the Corporation, be varied to a line appearing to the highway authority to be no less commodious and convenient to persons appearing to the highway authority to be likely to use the highway.

7 Subsidiary powers

- (1) Without prejudice to the generality of the foregoing provisions of this Part of this Act, the Corporation may within the limits of deviation and within the lines marked on the deposited plans “Limit of land to be acquired”, in connection with the works and for the purposes thereof—
- (a) make junctions and communications between any of the works and any waterways, rivers, streams and watercourses and any existing streets, roads, bridleways, ways, bridges, towing paths and footpaths;

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- (b) stop up, remove, alter or otherwise interfere with means of access between any premises and any highway which is diverted or stopped up or altered under this Act;
 - (c) make, provide, alter and maintain all necessary and convenient walls, banks, embankments, locks, piling, cofferdams, borrow pits, settling ponds, fences, facilities for watering cattle and other animals, culverts, drains, conduits, dykes, intakes, outfalls, spillways, syphons, watercourses, cuttings, aqueducts, tunnels, fish passes, weirs, sluices, valves, wharves, moorings and mooring areas, linings, mattresses, pitching, roads, bridges, towpaths, bridleways and footpaths and all such mains, pipes, cables, wires, pumps, machinery and works and appliances as may be required;
 - (d) raise, widen, lengthen, alter, reconstruct, replace or remove the bridges over the navigation or any watercourse and the approaches to such bridges and strengthen, underpin, widen and deepen the piers, arches and other supports, and the foundations of such bridges without acquiring the said bridges or any interest therein;
 - (e) carry out works to any towpath forming part of the navigation;
 - (f) stop up and discontinue so much of the watercourses shown on the deposited plans as will be rendered unnecessary by reason of the execution of the works and remove or infill any locks or other structures associated therewith;
 - (g) execute any works or abstract water for the protection of any adjoining lands, buildings or structures;
 - (h) temporarily or permanently use, strengthen, widen, improve, remove, alter, divert, stop up or otherwise interfere with any drain, sewer, outfall, intake, watercourse or other channel, providing where possible a proper substitute before interrupting the flow of sewage in any drain or sewer or water in any watercourse or other channel;
 - (i) temporarily or permanently use, strengthen, remove, alter, divert, stop up or otherwise interfere with telegraphic, telephonic, water, gas, petroleum and other pipes, lines, wires, works and apparatus;
 - (j) fell, lop or cut and remove any fence or hedge and any tree, bush, shrub or other vegetation;
 - (k) raise, lower or otherwise alter the level of any land and remove anything therefrom; and
 - (l) dispose of spoil or other material excavated in the execution of the works.
- (2) In the exercise of the powers conferred by this section the Corporation shall cause as little detriment and inconvenience to any person as the circumstances permit and shall pay compensation for any damage done in the exercise of such powers.
- (3) Any question of disputed compensation payable under the provisions of this section shall be determined by the tribunal.

8 Power to improve and regulate flow of watercourses

(1) (a)

Without prejudice to the powers contained in section 7 (Subsidiary powers) of this Act but subject to the other provisions of this Act, the Corporation for the purposes of improving or regulating the flow of any of the watercourses which may require improvement or regulation consequent upon the operation or maintenance of any of the works may—

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- (i) widen, dredge, cleanse and scour the watercourse;
 - (ii) reduce or remove any shoals, shelves, banks or other accumulations therein;
 - (iii) alter or remove or cause to be altered or removed any weirs, sluices or other impediments or obstructions whatsoever therein or on the banks thereof;
 - (iv) alter or reconstruct any culvert or other structure therein or on the banks thereof.
- (b) Any spoil or other material dredged or removed in the exercise of the powers of this subsection may be deposited on the banks of the watercourse.
- (2) The Corporation shall pay compensation to all persons for any damage sustained by them or liability to which they may become subject by reason of the exercise by them of the powers of this section.
- (3) Any question of disputed compensation payable under the provisions of this section shall be determined by the tribunal.
- (4) The powers conferred on the Corporation by this section shall not be exercised in relation to a watercourse under the jurisdiction of the Rivers Authority except with the consent of the Rivers Authority and any such consent may be given subject to such reasonable terms and conditions (other than a monetary payment as the consideration for the grant of the consent) as the Rivers Authority may think fit but shall not be unreasonably withheld.

9 Power to deviate

Subject to the provisions of this Act in the execution of any, or any part, of the works the Corporation may deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation of those works and may deviate vertically from the levels shown on the deposited sections to any extent upwards or downwards.

10 Temporary stoppage of roads, rivers, etc

- (1) The Corporation during and for the purpose of the execution of the works may temporarily stop up and divert and interfere with all or any part of any road, bridleway, towpath, footpath, waterway, river, navigation or other right of way and may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road, bridleway, towpath or footpath from passing along and using the same.
- (2) The Corporation shall provide reasonable access for persons on foot bona fide going to or from any such land, house or building.
- (3) The Corporation shall not exercise the powers of this section in relation to any road, bridleway or footpath without the consent of the highway authority but such consent shall not be unreasonably withheld and any question as to whether such consent has been unreasonably withheld shall be determined by arbitration.
- (4) The Corporation shall not exercise the powers of this section in relation to the navigation or any towpath forming part of the navigation without the consent in writing of the Board which consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be determined by arbitration.

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- (5) The Corporation shall not exercise the powers of this section in relation to any waterway, river or navigation other than the navigation without the consent in writing of the Rivers Authority which consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be determined by arbitration.
- (6) The Corporation shall not exercise the powers of this section with respect 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;
 - (b) the operator over that road of a local service as defined in the Transport Act 1985; and
 - (c) the highway authority for the road;except in case of emergency when such notice as is practicable shall be given.
- (7) The exercise by the Corporation of the powers of this section in relation to any road, bridleway or footpath shall not affect the right of telecommunications operators to maintain, inspect, repair, renew or remove telecommunication apparatus or break open that road, bridleway or footpath for any of those purposes.

11 Stopping up and diversion of highways, etc

- (1) Subject to the provisions of this section, the Corporation may stop up and discontinue the existing or alleged highways specified in column (1) of Schedule 2 to this Act and any other public or private way existing within the limits of deviation other than—
 - (a) the footpath numbered 25 on the definitive map east of point L;
 - (b) that part of the footpath numbered 76 on the definitive map between point CCC and point J; and
 - (c) that part of the un-numbered path on the definitive map between point NNN and point OOO.
- (2) Upon the stopping up of a highway or other way under this section, all rights of way over or along any such highway or other way and all obligations appertaining thereto shall be extinguished.
- (3) Where the provision of any road, bridleway or footpath specified in Schedule 1 to this Act is referred to in column (2) of Schedule 2 to this Act as in substitution for an existing or alleged highway, the stopping up of the existing or alleged highway shall not in any case take place until the highway authority is satisfied that the new road, bridleway or footpath has been completed in accordance with its reasonable requirements and is open for public use or, in the case of any difference between the Corporation 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 determined by arbitration.
- (4) Before referring a matter to arbitration under this section, the Corporation shall give to the highway authority 7 days' notice in writing of their intention to do so.
- (5) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to be paid by the Corporation compensation to be determined in case of dispute by the tribunal.

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12 Appropriating sites of roads and footpaths

After a road, bridleway or footpath or portion thereof is diverted or stopped up as mentioned in section 11 (Stopping up and diversion of highways, etc.) of this Act, the Corporation may, as far as the said road, bridleway or footpath or portion thereof is bounded on both sides by lands of the Corporation, appropriate without making any payment therefor and use for the purposes of their undertaking the site thereof.

13 Repair of highways

Any road, bridleway or footpath or portion thereof made, diverted or altered under this Act shall, when completed, unless otherwise agreed, be maintained by and at the expense of the highway authority.

14 Agreements between Corporation and highway authorities

- (1) When a bridge, road, bridleway or footpath or portion thereof will be altered or stopped up or interfered with under this Act, the Corporation may enter into and carry into effect agreements with the highway authority in reference to the construction or contribution towards the costs of such alteration or of any new bridge, road, bridleway or footpath to be made under this Act and in reference to any other matters relating thereto.
- (2) The Corporation may by agreement delegate to the highway authority the power of constructing and maintaining all or any of such alterations or new bridge, road, bridleway or footpath in which they may be interested including the structure of any bridge over or under any waterway.
- (3) The purposes of this section shall be deemed to be purposes for which a highway authority may incur expenditure and borrow money.

15 Alterations to main river

- (1) Upon completion of Work No. 1, the new channel comprised in that work shall be treated as part of a main river within the meaning given in Part IV of the Act of 1991, the former channels of the river diverted by the works shall cease to be treated as part of a main river and the main river map for the area shall be varied to give effect to this subsection.
- (2) For the purposes of subsection (1) above, the Rivers Authority shall apply for and the Minister of Agriculture, Fisheries and Food shall make any necessary variation of a main river map.
- (3) Section 194 (5) of the Act of 1991 shall not apply to any variation of a main river map made under this section.

16 Certain of works deemed to be constructed under impounding licence

- (1) Works Nos. 1, 2 and 7 shall be deemed to have been constructed under licences under Part II of the Act of 1991 granted by the Secretary of State to the Corporation and, except as may be otherwise provided by this Act, the provisions of that Act relating to licences granted for the purposes of section 25 of that Act shall apply to the licences deemed by this section to have been granted as they apply to those so granted.

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- (2) Nothing in this Act shall exempt the Corporation from the provisions of sections 9 to 14 of the Salmon and Freshwater Fisheries Act 1975.

17 Diversion of flow of water

- (1) Subject to the provisions of this Act, the Corporation may by means of the works divert, abstract, intercept, stop up or otherwise interfere with the waters or the flow of water in the river or the navigation or in any other watercourse which may be intercepted by the said works or any of them.
- (2) The restriction imposed by subsection (1) of section 24 of the Act of 1991 shall not apply to abstraction of water under subsection (1) above.

18 Discharges for works purposes

- (1) In this section “relevant authority” means a sewerage undertaker, an internal drainage board, the Rivers Authority or the Leeds City Council.
- (2) The Corporation may use for the discharge of any water pumped or found by them during the construction of the works any available stream or watercourse, or any sewer or drain of a relevant authority, and for that purpose may lay down, take up and alter conduits, pipes and other works and may make any convenient connections with any such stream, watercourse, sewer or drain within the limits of deviation.
- (3) The Corporation shall not—
- (a) directly or indirectly discharge any water into any sewer or drain vested in or under the control of a relevant authority except with the consent of the relevant authority which consent shall not be unreasonably withheld and subject to such terms and conditions as the relevant authority may reasonably impose; or
 - (b) make any opening into any such sewer or drain save in accordance with plans approved by, and under the superintendence (if given) of, the relevant authority in whom the sewer or drain is vested, but approval of those plans by the relevant authority shall not be unreasonably withheld.
- (4) (a)
- Section 85 of the Act of 1991 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 104 of that Act as if this section were not a local statutory provision for the purposes of section 88 (1) (f) of that Act.
- (b) In the exercise of their powers under this section the Corporation 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 113 of the Act of 1991.
- (5) The Corporation shall take all such steps as may reasonably be required to secure that any water discharged by them under this section shall be as free as may be reasonably practicable from any gravel, soil or other solid substance or matter in suspension.
- (6) Any difference arising between the Corporation and a relevant authority under this section shall be determined by arbitration.
- (7) The powers of this section shall not be exercised so as to damage or injuriously affect the railway or works of the railways board or so as to interfere with or obstruct the

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free, uninterrupted and safe user of the railway or the traffic thereon and, if the railway or any works of the railways board is or are damaged or injuriously affected or any interference or obstruction shall be caused or take place, the Corporation shall pay to the railways board all expenses incurred by them and compensation for any loss which they may sustain by reason of that damage, injurious affection, interference or obstruction.

19 Discharges following completion of works

- (1) Following the completion of Works Nos. 1 and 2, the Corporation may for the purpose of draining the opencast site cause any water to be found therein to be discharged into the river as modified by Work No. 1 and for that purpose the Corporation may lay down, take up and alter conduits, pipes and other works, provide settling ponds and make any convenient connections with the river and any other stream or watercourse and any sewer or drain within the limits of deviation.
- (2) Subsections (3) to (7) of section 18 (Discharges for works purposes) of this Act shall apply to the exercise of the powers of this section.

PART III

LAND

20 Purchase of land

- (1) The Corporation may purchase compulsorily and use such of the land delineated on the deposited plans and described in the deposited book of reference as they require for the purposes of—
 - (a) the works;
 - (b) obtaining materials for the construction of the works, or depositing spoil or other material excavated during the construction thereof;
 - (c) obtaining access to the works;or otherwise for the purposes of this Act or other purposes connected therewith.
- (2) The Corporation may enter upon, use and appropriate so much of the subsoil and undersurface of any public street, road, footway or place delineated on the deposited plans and described in the deposited book of reference as shall be necessary for the purposes of subsection (1) above without being required to purchase the same or any easement or other right therein or thereunder or to make any payment therefor.

21 Purchase of rights over land

- (1) In this section references to the purchase by the Corporation of new rights are references to the purchase of rights to be created in favour of the Corporation and such rights may consist of or include rights restrictive of the user of land.
- (2) The Corporation may, for any of the purposes mentioned in section 20 (Purchase of land) of this Act, purchase compulsorily such new rights as they require over any of the land delineated on the deposited plans and described in the deposited book of reference instead of purchasing that land under that section.

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- (3) 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 new 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 new rights or to land over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.
- (4) Without prejudice to the generality of subsection (3) above, in relation to the purchase of new rights under subsection (2) above—
 - (a) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 3 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.

22 Extinction or suspension of private rights of way

- (1) All private rights of way over any land which may be purchased compulsorily under this Act shall be extinguished on the purchase of the land whether compulsorily or by agreement or on the entry on the land under section 11 (1) of the Act of 1965, as applied by this Act, whichever is sooner.
- (2) All private rights of way over any land of which the Corporation may take temporary possession under this Act shall be suspended and unenforceable against the Corporation for so long as the Corporation shall remain in lawful possession thereof.
- (3) Any person who suffers loss by the extinguishment or suspension of any right under this section shall be entitled to be paid by the Corporation compensation to be determined by the tribunal.

23 Power to use bed and banks of rivers, etc

- (1) The Corporation may for the purposes of the works enter upon and use so much of the bed, shore, bank and embankment of any river, canal, stream, brook and watercourse as is within the limits of deviation or within the lines marked on the deposited plans “Limit of land to be acquired” as may be required for those purposes and they may also, for the purposes of executing and placing temporary works and conveniences in connection with the works, occupy and use temporarily so much of such bed, shore, bank and embankment within the said limits or lines as may be required for the purposes of the works.
- (2) Before exercising the powers of this section in relation to any waterway, river, stream, brook or watercourse other than the river the Corporation shall give not less than 14 days' written notice to and consult with the regional flood defence committee.

24 Correction of errors in deposited plans and book of reference

- (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 Corporation 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.

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- (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 of the House of Commons, and with the proper officer or chairman of a local authority with whom a copy of the deposited plans (or so much thereof as includes the land to which the certificate relates) has been deposited in accordance with the Standing Orders of the Houses of Parliament, or who has the custody of any such copy so deposited; 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 Corporation to take the land or such new rights thereover as they may require 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.

25 Purchase of part of certain properties

- (1) Where a copy of this section is endorsed on, or annexed to, a notice to treat served under the Act of 1965, as applied by this Act, the following provisions of this section shall apply to the land subject to the notice instead of section 8 (1) of that Act and, in case of agricultural land, instead of sections 53 to 56 of the Land Compensation Act 1973.
- (2) Where the land subject to the notice is part only of a house, building or factory, or part only of land consisting of a house, together with any park or garden belonging thereto, or part only of an agricultural unit, then, if the person on whom the notice is served, within 21 days after the day on which the notice is served on him serves on the Corporation a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (hereafter in this section referred to as “the land subject to the counter-notice”), the question whether he shall be required to sell the part shall, unless the Corporation agree to take the land subject to the counter-notice, be referred to the tribunal.
- (3) If the said person does not serve such a counter-notice as aforesaid within 21 days after the day on which the notice to treat is served on him, or if on such a reference to the tribunal the tribunal determine that the part subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, in the case of part of land consisting of a house, together with a park or garden belonging thereto, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the said person shall be required to sell the part.
- (4) If on such a reference to the tribunal the tribunal determine that part only of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat shall be deemed to be a notice to treat for that part.
- (5) If on such a reference to the tribunal the tribunal determine that the land subject to the notice to treat cannot be taken without material detriment to the remainder of the

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land subject to the counter-notice but that the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Corporation are authorised to purchase compulsorily under this Act.

- (6) If the Corporation agree to take the land subject to the counter-notice, or if the tribunal determine that—
- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
 - (b) the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice, whether or not the whole of the land is land which the Corporation are authorised to purchase compulsorily under this Act.

- (7) In any case where, by virtue of a determination by the tribunal under subsection (4), (5) or (6) above, a notice to treat is deemed to be a notice to treat for part of the land specified in the notice or for more land than is specified in the notice, the Corporation may, within six weeks after the tribunal make their determination withdraw the notice to treat, and if they do so shall pay to the said person compensation for any loss or expense occasioned to him by the giving and withdrawal of the notice, to be determined in default of agreement by the tribunal.
- (8) Where a person is required under this section to sell part only of a house, building or factory, or of land consisting of a house, together with any park or garden belonging thereto, or of an agricultural unit, the Corporation shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of his interest therein.
- (9) In this section “agricultural land” and “agricultural unit” have the meanings given by section 109 of the Agriculture Act 1947.

26 Disregard of recent improvements and interests

In determining a question with respect to compensation claimed in consequence of the compulsory purchase of land under this Act, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) 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 purchased or on any other land with which the claimant is, or was at the time of the 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.

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27 Set-off for enhancement in value of retained land

- (1) In assessing the compensation payable to any person on the compulsory purchase by the Corporation from him of any land under this Act, the tribunal shall—
 - (a) have regard to the extent to which the remainder of the land or the remaining contiguous lands belonging to the same person may be benefited by any of the works or by the restoration of the river; and
 - (b) set off against the value of the land acquired any increase in value of the remainder of the land or the remaining contiguous lands belonging to the same person which will accrue to him by reason of the construction of any of the works or of the restoration of the river.
- (2) The Act of 1961 shall have effect subject to the provisions of this section.

28 Grant of rights by persons under disability

- (1) Any person empowered by the Act of 1965 as applied by this Act to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the Corporation any right required for the purposes of this Act in, under or over the lands:

Provided that nothing in this section shall be construed as empowering persons to grant any right of water in which any other person has an interest, unless that other person concurs in the grant.
- (2) The provisions of the Act of 1965 with respect to lands and rent-charges so far as they are applicable shall extend and apply to any such grant and to any such right as aforesaid.

29 Agreements with adjoining owners

- (1) The Corporation 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 works, or of land which may be acquired by the Corporation under this Act, with respect to the sale by the Corporation to him (subject to such reservations, restrictions or other provisions as to the Corporation seem fit) of any land not required for the works.
- (2) The Corporation 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 Corporation for the purposes of this Act or any easement or right so required.

30 Power to reinstate owners or occupiers of property

- (1) The Corporation 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 by the Corporation with respect to his reinstatement.
- (2) Any such agreement may provide for the exchange of land; and for that purpose the Corporation may pay or receive money for equality of exchange.

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31 Period for compulsory purchase of land and rights

- (1) The powers of the Corporation for the compulsory purchase of land and rights over land under this Act shall not be exercised after the expiration of five years from the passing of this Act.
- (2) The powers of the Corporation for the compulsory purchase of land and rights over land shall, for the purposes of this section, be deemed to have been exercised if notice to treat has been served in respect of those lands and rights.

PART IV

PROTECTIVE PROVISIONS

32 For protection of British Waterways Board

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

- (1) In this section—
 - “construction” includes execution, placing, altering and the maintenance and repair of the works and “construct” and “constructed” shall be construed accordingly;
 - “the engineer” means an engineer to be appointed by the Board;
 - “plans” includes sections, drawings and particulars (including descriptions of methods of construction):
- (2) Notwithstanding anything in this Act or shown on the deposited plans, the Corporation shall not acquire compulsorily any land or other property of the Board or rights over such land or property:
- (3) The Corporation if they commence the construction of any part of the works described in Part I of Schedule 1 to this Act shall complete the whole of the works so described together with the further works and facilities described in Part II of that Schedule:
- (4) The Corporation shall, before commencing the construction of the works, including temporary works, furnish to the Board proper and sufficient plans thereof for the reasonable approval of the engineer, and shall not commence the construction of the works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that, if within 56 days after such plans have been furnished to the Board the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:

- (5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the works to ensure the safety or stability of the navigation or to protect it from injury from the works (including works to ensure the safety or stability, or for the protection of, any part of the navigation which it is intended shall become a superseded length until such time as it is superseded) and such protective works as may be reasonably necessary for those purposes shall be constructed by the Corporation with all reasonable dispatch:

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- (6) The Corporation shall pay to the Board a capitalised sum representing the increased or additional cost of maintaining and, when necessary, renewing any permanent protective works provided under paragraph (5) above, and of carrying out any additional dredging of the navigation necessitated by the exercise of any of the powers of this Act but if the cost of maintaining or dredging, or of works of renewal on, the navigation is reduced in consequence of the authorised works and any such protective works, a capitalised sum representing such saving shall be set off against any sum payable by the Corporation to the Board under this section:
- (7) The Corporation shall give to the engineer not less than 28 days' notice of their intention to commence the construction of the works or any protective works and also, except in emergency (when they shall give such notice as may be reasonably practicable) of their intention to carry out any works for the repair or maintenance of the works in so far as such works of repair or maintenance affect or interfere with the navigation so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of their inland waterways:
- (8) The Corporation shall provide and maintain at their expense such temporary lighting of the navigation and signal lights in the vicinity of the works as the engineer may reasonably require during the construction of the works:
- (9) The construction of the works shall, when commenced, be carried out with all reasonable dispatch in accordance with the approved plans and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to the navigation and as little interference as may be with the passage of vessels using the navigation and if any damage to the navigation or any stoppage thereof or any interference with the passage of vessels using the navigation shall be caused by the construction of the works, or by the passage of vehicles, plant and machinery used in connection therewith, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and on demand pay to the Board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage, stoppage or interference:
- Provided that nothing in this paragraph shall impose any liability on the Corporation with respect to any damage, expenses or loss which is attributable to the act, neglect or default of the Board or their servants, contractors or agents:
- (10) The Corporation shall at all times afford reasonable facilities to the engineer for access to the works during their construction and shall supply him with all such information as he may reasonably require with regard to the works or the method of construction thereof:
- (11) Without prejudice to paragraph (10) above the Corporation following the completion of the initial construction of the works shall restore so much of the navigation (other than the superseded length) as is affected by the works to a condition no less satisfactory than its condition immediately prior to the commencement of the works:
- (12) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation to discharge any water directly or indirectly into the canalised section of the navigation or Work No. 2 without the agreement of the Board in writing but nothing in this paragraph shall apply to the superseded length as from the transfer date:

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- (13) Nothing in section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act shall authorise the Corporation—
- (a) to discharge any water directly or indirectly into the new navigation downstream of the junction of Work No. 2 and Work No. 1 except in accordance with such reasonable conditions as may be prescribed in writing by the Board; or
 - (b) to carry out any works to, or make any opening in, or otherwise interfere with the navigation (including the banks and bed thereof) save in accordance with plans approved by, and under the supervision (if given) of the engineer, such approval not to be unreasonably withheld and, if within 56 days after such plans have been furnished to the Board the engineer has not notified his disapproval and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:
- (14) The conditions prescribed by the Board under paragraph (13) (a) above may include conditions—
- (a) specifying the maximum volume of water which may be discharged in any period;
 - (b) authorising the Board to require the Corporation to suspend the discharge of water or to reduce the flow of water where this is necessary by reason of any operational requirement of the Board:
- (15) Nothing in section 18 (Discharges for works purposes) of this Act, and no approval of plans under paragraph (13) (b) above, shall confer on the Corporation any right to discharge water into the navigation after the completion of the works or, if any of the works are not completed, after the powers to carry out that part of the works have effectively been abandoned:
- (16) Nothing in section 19 (Discharges following completion of works) of this Act and no approval of plans under paragraph (13) (b) above shall confer on the Corporation any right to discharge water into the navigation after the dewatering of the opencast site has been completed:
- (17) The Corporation shall not in the course of constructing the works or exercising any of the powers of this Act or otherwise in connection therewith pollute or deposit any materials in the navigation (other than the superseded length) or do or permit anything which may result in such pollution and shall take such steps as the engineer may reasonably require to avoid or make good any breach of their obligations under this paragraph:
- (18) The Corporation shall repay to the Board all costs, charges and expenses reasonably incurred by the Board—
- (a) in respect of the employment of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for the period of the construction of the works for inspecting, watching and lighting the navigation and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the works;
 - (b) in respect of the approval by the engineer of plans supplied by the Corporation under paragraphs (4) or (13) above and the supervision by him of the construction of the works or the exercise of the powers of section 18 (Discharges for works purposes) or section 19 (Discharges following completion of works) of this Act as those powers have effect in accordance with paragraphs (13), (14) and (15) above;

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- (c) in bringing the specified works to the notice of users of the waterways comprised in the undertaking of the Board:
- (19) The Corporation shall be responsible for and make good to the Board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the Board by reason of any act or omission of the Corporation or of any persons in their employ, or of their contractors or others whilst engaged upon the construction of the works or in exercising any of the powers of this Act and the Corporation shall effectively indemnify the Board from and against all claims and demands arising out of, or in connection with, the construction of the works or the exercise of any of the powers of this Act or any such failure, act or omission as aforesaid:
- Provided that—
- (i) nothing in this paragraph shall impose any liability on the Corporation with respect to any damage or injury to the extent that such damage or injury may be attributable to the act, neglect or default of the Board or of any person in their employ, or of their contractors or agents;
- (ii) the Board shall give to the Corporation reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Corporation:
- (20) The fact that any act or thing may have been done in accordance with plans approved by the engineer, or in accordance with any requirement of the engineer or under his supervision, shall not (if it was done without negligence on the part of the Board or of any person in their employ, or of their contractors or agents) excuse the Corporation from any liability under the provisions of this section:
- (21) Nothing in this Act shall authorise the Corporation to make or maintain any permanent works in or over the navigation so as to reduce the width thereof or as to impede or prevent the passage of any vessel of a kind (as to its dimensions) for which the Board are required by section 105 (1) (b) and (2) of the Transport Act 1968 to maintain the navigation:
- (22) (a)
- In this paragraph “the relevant works” means so much of the works comprised in Work No. 1 as are situated downstream of the junction between Work No. 1 and Work No. 2;
- (b) The Corporation following the completion of the relevant works shall maintain the same to the reasonable satisfaction of the Board so as to enable the Board to comply with the duties imposed on them by or under section 41 (New navigation to be commercial waterway, etc.) of this Act and section 105 of the Transport Act 1968:
- (23) Any difference arising between the Corporation and the Board under this section shall be determined by arbitration.

33 For protection of National Rivers Authority

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

- (1) In this section—

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

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

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

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

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

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

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

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

Before beginning to construct any specified work, the Corporation shall submit to the Rivers Authority plans of the work and such further particulars available to them as the Rivers Authority may reasonably require;

- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Rivers Authority, or settled by arbitration;
- (c) Any approval of the Rivers Authority required under this paragraph—
 - (i) shall not be unreasonably withheld;
 - (ii) shall be deemed to have been given if it is neither given nor refused within two months of the submission of plans for approval;
 - (iii) may be given subject to such reasonable requirements as the Rivers Authority may impose for the protection of any drainage work or the fishery or water resources and for the prevention of flooding and pollution:

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- (5) Without prejudice to the generality of sub-paragraph (iii) of paragraph (c) of paragraph (4) above, but subject always to the provision of that sub-paragraph as to reasonableness, the requirements which the Rivers Authority may impose under that paragraph include—
- (a) requirements as to the levels of the specified works and their alignments within the limits of deviation;
 - (b) requirements as to fish pass and other fisheries facilities, sluices, gauges and other monitoring devices to be constructed as part of or in connection with the works;
 - (c) conditions requiring the Corporation at their own expense—
 - (i) to provide or maintain means of access for the Rivers Authority;
 - (ii) to undertake landscaping;
 - (iii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work:
- (6) Any specified work, and all protective works required by the Rivers Authority under paragraph (4) above, shall be constructed to the reasonable satisfaction of the Rivers Authority and the Rivers Authority shall be entitled by its officer to watch and inspect the construction of such works:
- (7) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Corporation to the reasonable satisfaction of the Rivers Authority and, if the Corporation fail to do so, the Rivers Authority may make good the same and recover from the Corporation the expense reasonably incurred by them in so doing:
- (8) Without prejudice to the other provisions of this section, the Corporation shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish during the construction of the works and shall not exercise the powers of section 8 (Power to improve and regulate flow of watercourses) of this Act in such a manner as is likely to affect prejudicially the operation of any fish pass facilities or other work provided to help secure or monitor the passage of fish:
- (9) (a)
- Plans of any specified work shall not be submitted by the Corporation to the Minister for his approval pursuant to section 9 of the Salmon and Freshwater Fisheries Act 1975 until plans of that work have been approved or are deemed to have been approved by the Rivers Authority or submitted for settlement under paragraph (13)(a) below, and, if, on the submission of plans to the Minister, he requires any alteration of the plans so approved or settled under this section, or of any such requirement relating thereto, the Corporation shall, not less than 28 days before commencing the work, inform the Rivers Authority of any such alteration;
- (b) Subject to compliance with sub-paragraph (a) above, if there shall be any inconsistency between any plans approved or deemed to be approved by the Rivers Authority or settled under paragraph (4) above or any requirement

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relating thereto, and the plans approved by the Minister or any conditions or restrictions imposed by him under that section, the specified work shall be constructed in accordance with the plans approved by the Minister and subject to the conditions or restrictions imposed by him:

(10) (a)

Without prejudice to the other provisions of this section the Corporation shall indemnify the Rivers Authority against all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Rivers Authority in consequence of—

- (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
- (ii) any damage to the fishery; or
- (iii) any raising of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
- (iv) any flooding or increased flooding of any such land;

which may be caused by, or result from, the construction of the works or any act or omission of the Corporation, their contractors, agents, workmen or servants whilst engaged upon the works;

- (b) The Rivers Authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:

(11) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Rivers Authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Corporation from any liability under the provisions of this section:

(12) For the purposes of section 109 of the Act of 1991 (as to structures in, over or under a main river) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Rivers Authority under this section with respect to the erection of any structure shall be deemed also to constitute a consent or approval under the said section 109 as respects the erection of that structure:

(13) (a)

Any difference arising between the Corporation and the Rivers Authority under paragraph (4) above if the parties agree to arbitration shall be determined by arbitration, or if the parties do not agree to arbitration shall be settled by the Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly on a reference to them by the Corporation or the Rivers Authority after notice by one to the other;

- (b) Subject to sub-paragraph (a) above, any difference arising between the Corporation and the Rivers Authority under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.

34 For protection of electricity, gas and water undertakers

For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Corporation and the undertakers concerned, have effect:—

(1) In this section—

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

“apparatus” means—

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

(not being in any case apparatus in respect of which the relations between the Corporation and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950) and includes any building, structure or works for the lodging therein of apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“the undertakers” means any person authorised to carry on an undertaking for the supply of electricity, gas or water within any area within which the Corporation are by this Act authorised to purchase land or execute works and, in relation to—

- (a) water undertakers, includes water undertakers in their capacity as undertakers authorised to carry on an undertaking for the supply of water within their area;
- (b) any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained:

- (2) Notwithstanding the temporary stopping up or diversion of any road or footpath under the powers of section 10 (Temporary stoppage of roads, rivers, etc.) of this Act, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such road or footpath as may be reasonably necessary or desirable to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that road or footpath:
- (3) Notwithstanding anything in this Act or shown on the deposited plans the Corporation shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
- (4) If the Corporation, in the exercise of the powers of this Act, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus shall have been constructed and be in operation to the reasonable satisfaction of the undertakers:
- (5) If the Corporation, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Act, require the removal of any apparatus placed in that land, and give to the undertakers not less than 56 days' written notice of such requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or

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constructed so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, or if, in consequence of the exercise of any of the powers of this Act, the undertakers reasonably require to remove any apparatus, the Corporation shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Corporation and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Corporation, and the Corporation are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Corporation, as soon as reasonably practicable use their reasonable endeavours to obtain the necessary facilities and rights in such last-mentioned land:

(6) (a)

Any alternative apparatus to be constructed in land of the Corporation under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Corporation or in default of agreement determined by arbitration;

- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or determined by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Corporation to be removed under the provisions of this section:

- (7) Notwithstanding anything in paragraph (6) above, if the Corporation give notice in writing to the undertakers that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will be situate in any land of the Corporation, such work, in lieu of being executed by the undertakers, shall be executed by the Corporation with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Corporation to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around any apparatus extending (where the apparatus is laid in a trench) to 600 millimetres above the apparatus:

- (8) Where, in accordance with the provisions of this section, the Corporation afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Corporation of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Corporation and the undertakers or in default of agreement determined by arbitration:

Provided that—

- (a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along the navigation or the river the arbitrator shall—
- (i) give effect to all reasonable requirements of the Corporation for ensuring the safety and efficient operation of the navigation or the

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river and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works or the traffic on the navigation or the river; and

- (ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the navigation or the river for which the alternative apparatus is to be substituted;
- (b) if the facilities and rights to be afforded by the Corporation in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Corporation to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:

(9) (a)

Not less than 56 days before commencing to execute any such works as are referred to in paragraph (5) above and are near to or will or may affect any apparatus the removal of which has not been required by the Corporation under the said paragraph (5), the Corporation shall submit to the undertakers a plan, section and description of the works to be executed;

- (b) Such works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of such works:

Provided that—

- (i) if the undertakers within 42 days after the submission to them of any such plan, section and description, in consequence of the works proposed by the Corporation, reasonably require the removal of any apparatus and give written notice to the Corporation of such requirement, the foregoing provisions of this section shall have effect as if the removal of such apparatus had been required by the Corporation under the said paragraph (5);
- (ii) nothing in this sub-paragraph shall preclude the Corporation from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any such works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and description;
- (c) The Corporation shall not be required to comply with sub-paragraph (a) above in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances;

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- (d) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the Corporation shall provide adequate alternative means of access to such apparatus:
- (10) Where, in consequence of this Act, any part of any street, road or footpath in which any apparatus is situate ceases to be part of a street, road or footpath, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall prejudice or affect any right of the Corporation or of the undertakers to require removal of such apparatus under this section or the power of the Corporation to execute works in accordance with paragraph (9) above:
- (11) The Corporation shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph (5) above, less the value of any apparatus removed under the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—
- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and
 - (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;
- in consequence of the execution, maintenance, user or failure of any such works or otherwise in consequence of the exercise by the Corporation of the powers of this Act:
- (12) Where, in consequence of the stopping up of any street, road or footpath under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such street, road or footpath or elsewhere is rendered derelict or unnecessary, the Corporation shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Corporation) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason or in consequence of such apparatus being so rendered derelict or unnecessary:
- Provided that the Corporation shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Corporation been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:
- (13) Any difference arising between the Corporation and the undertakers under this section shall be determined by arbitration:
- (14) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Corporation and the undertakers in respect of any apparatus laid or erected in land belonging to the Corporation at the date of the passing of this Act.

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35 For protection of sewers

For the protection of the sewers of Yorkshire Water Services Limited (hereinafter called “the company”) the following provisions shall, unless otherwise agreed in writing between the Corporation and the company, have effect:—

(1) In this section—

“construction” includes execution, placing and altering and, in relation to temporary works, includes removal and “constructed” shall be construed accordingly;

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

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

“specified work” means Works Nos. 11 and 12 and so much of any work (whether temporary or permanent) forming part of, or constructed in connection with, the works, or any of them, as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer, and includes the construction, maintenance or renewal of any such works:

(2) The Corporation shall not commence any specified work until they have given to the company 56 days' previous notice in writing of their intention to commence the same by leaving such notice at the principal office of the company with plans as described in paragraph (7) below (in this section referred to as “the said plans”) and until the company have signified their approval of the said plans:

Provided that such approval shall not be unreasonably withheld and, if within 56 days after the submission of the said plans the company have not approved or disapproved them, they shall be deemed to have approved the said plans:

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

(4) All such new, altered or substituted works shall, where so required by the company, be constructed by or under the direction, superintendence and control of an officer of the company duly appointed for the purpose at the expense of the Corporation and all reasonable expenses to which the company may be put by reason of such works, whether in the execution thereof, or in the preparation or examination of plans or designs or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the company by the Corporation:

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

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

(7) The plans to be submitted to the company for the purposes of this section shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed

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to be constructed and shall accurately describe the position of all sewers of the company within the limits of deviation (for which purpose the company shall allow the Corporation access to plans in their possession and to any of their sewers in order to enable the Corporation to obtain reliable information) and shall comprise detailed drawings of every alteration which the Corporation may propose to make in any such sewers:

- (8) The company may require such modifications to be made in the said plans as may be reasonably necessary to secure the sewerage system of the company against interference or risk of damage and to provide and secure a proper and convenient means of access to the sewers of the company:
- (9) If, in consequence of the construction of the works, any damage shall be caused to any sewer or property of the company (other than a sewer the repair of which is not reasonably necessary in view of its intended removal), the Corporation shall either make good the damage by restoring the sewer to its former standard of efficiency or where necessary construct some other work in substitution therefor or, if the company so requires, repay the cost reasonably incurred by the company in making good such damage and shall—
- (a) make reasonable compensation to the company for any loss sustained by them; and
 - (b) indemnify the company against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by the company;

in consequence of any such damage:

Provided that—

- (i) nothing in this paragraph shall impose any liability on the Corporation with respect to any damage to the extent that such damage is attributable to the act, neglect or default of the company, their officers, servants, contractors or agents; and
 - (ii) the company shall give to the Corporation reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Corporation:
- (10) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 10 (Temporary stoppage of roads, rivers, etc.) of this Act, the company shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, alter, protect, remove or use any sewer which at the time of the stopping up or diversion was in that highway:
- (11) It shall be lawful for an officer of the company duly appointed for the purpose at any reasonable time and, if required by the Corporation, under their supervision to enter upon and inspect any specified work or any other works constructed under the powers of this section:
- (12) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the company or to the satisfaction of the company in accordance with any directions or award of an arbitrator, shall not relieve the Corporation from any liability under the provisions of this section:
- (13) Costs and expenses recoverable by the company from the Corporation under this Act include a proper proportion of the overhead charges of the company:

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- (14) As soon as reasonably practicable after the completion of the construction of a specified work the Corporation shall deliver to the company a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this section:
- (15) Any difference arising between the Corporation and the company under this section shall be determined by arbitration.

36 For protection of British Railways Board

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

- (1) In this section—

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

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

“plans” includes sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction);

“railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works;

“specified works” means so much of the works authorised by this Act (whether temporary or permanent) as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property:

- (2) The Corporation shall not under the powers of this Act acquire compulsorily any railway property but they may in accordance with the provisions of section 21 (Purchase of rights over land) of this Act acquire such rights in any railway property delineated on the deposited plans as they may reasonably require for the purposes of the specified works:
- (3) The Corporation shall during the construction of the specified works fence off the specified works from railway property to the reasonable satisfaction of the engineer where so required by him:
- (4) Notwithstanding the provisions of section 9 (Power to deviate) of this Act or anything shown on the deposited plans and sections, the Corporation —
- (a) shall not, in the construction of Works Nos. 1 to 5, 10, 12 and 12A, or any of them, deviate from the lines or situations thereof shown on the deposited plans at or to any point within 15 metres of any railway property without the consent of the railways board (which consent shall not be unreasonably withheld);
 - (b) shall not, in the construction of Works Nos. 1 to 5 and 10 to 12A, or any of them, deviate downwards from the levels shown on the deposited sections at or to any point within 15 metres of any railway property without the consent of the railways board (which consent shall not be unreasonably withheld);
 - (c) shall so construct and maintain Work No. 11 (other than the connection with the public sewer running under the railway at Methley North Station level crossing) as to ensure that no part of that work is constructed closer than 14

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metres, measured horizontally, from the outer edge of the nearest rail of the railways board's adjoining railway as existing on 1st January 1991:

(5) The exercise of the powers of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of land, as applied by section 3 (Incorporation of Railways Clauses Consolidation Act 1845), of and incorporated with, this Act, shall not prevent the exercise by the railways board of such rights as the railways board may have of access (with or without vehicles, machinery and materials) for the railways board and their agents and employees over any such land to and from railway property:

(6) The Corporation shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

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

(7) If within 56 days after such plans have been furnished to the railways board, the railways board give notice to the Corporation that the railways board desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property then, if the Corporation desire such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Corporation in accordance with the plans approved or deemed to be approved or settled as aforesaid:

(8) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Corporation, if the railways board so desire, with all reasonable dispatch and the Corporation shall not commence the construction of the specified works until the engineer has notified the Corporation that the protective works have been completed to his reasonable satisfaction:

(9) (a)

The Corporation shall give to the railways board notice in writing of their intention to commence the construction of any of the specified works in accordance with sub-paragraph (b) of this paragraph and, except in emergency (when they shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of the specified works;

(b) The period of notice required to be given by the Corporation to the railways board by virtue of sub-paragraph (a) of this paragraph shall be—

(i) six months in any case where the engineer, upon signifying his approval or disapproval of plans furnished to the railways board under paragraph (6) above, has reasonably given it as his opinion that the construction, maintenance or repair of the specified works will require the Corporation to have temporary occupation of the permanent way of the railway (including land lying within a distance of 6 metres from any outer rail of the railway) or will necessitate the imposition

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of speed restrictions, or the substitution, diversion or suspension of train services; and

(ii) 56 days in all other cases:

- (10) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage to railway property as may be; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe user of any railway of the railways board or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place, the Corporation shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain in consequence of any such damage, interference or obstruction:

- (11) The Corporation shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
 - (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
 - (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (12) The railways board shall at all times afford reasonable facilities to the Corporation and their agents for access to any works carried out by the railways board under this section during their construction and shall supply the Corporation with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (13) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of the specified works or during a period of 12 months after completion thereof, those alterations and additions may be affected by the railways board after not less than 28 days' notice has been given to the Corporation and the Corporation shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:

Provided that if the cost of maintaining, working or renewing the railway is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving may be set off against any sum payable by the Corporation to the railways board under this section:

- (14) The Corporation shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the Corporation as provided by paragraph (7) of this section or in constructing any protective

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- works under the provisions of paragraph (8) of this section including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
 - (c) in respect of any special traffic working resulting from any speed restrictions which are necessary in consequence of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
 - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary in consequence of the specified works or the failure thereof;
 - (e) in respect of the approval by the engineer of plans submitted by the Corporation and the supervision by him of the specified works:
- (15) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the Corporation informing them that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Corporation shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as not prejudicially to affect railway property and, if and whenever the Corporation fail to do so, the railways board may make and do in and upon the land of the railways board or of the Corporation all such works and things as are requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Corporation:
- (16) All temporary structures, erections, works, apparatus and appliances erected or placed by the Corporation under the powers of this Act upon, over or under any railway of the railways board shall, as soon as reasonably practicable, be removed by the Corporation at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property and as little interference with, or delay or interruption to, the traffic on the railways of the railways board as may be and, if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the Corporation shall forthwith make good such damage and pay to the railways board the reasonable costs and expenses to which they may be put and reasonable compensation for any loss which they may sustain in consequence of such damage, interference, delay or interruption:
- (17) Before providing any illumination or illuminated road traffic sign on or in connection with the specified works or in the vicinity of any railway of the railways board, the Corporation shall consult with the railways board and comply with their reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:
- (18) Any additional expense which the railways board may reasonably incur after giving 28 days' notice to the Corporation in widening, altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act in consequence of

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the existence of the specified works shall be repaid by the Corporation to the railways board:

- (19) The Corporation shall be responsible for and make good to the railways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to or reasonably incurred by the railways board—
- (a) in consequence of the specified works or the failure thereof; or
 - (b) in consequence of any act or omission of the Corporation or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

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

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

- (20) Any difference arising between the Corporation and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

37 Saving for nature conservation

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

38 Crown rights

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Corporation to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of any river, channel, creek or bay)—

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- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
 - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.
- (2) Consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

PART V

MISCELLANEOUS AND GENERAL

39 As to navigation enactments

- (1) Nothing in any local enactment relating to the navigation and in force at the passing of this Act shall prejudice or otherwise affect the exercise of the powers of this Act and, except as may otherwise be agreed between the Board and the Corporation, no part of the new navigation or any of the works authorised by this Act shall be subject to any right or obligation contained in any such enactment.
- (2) Without prejudice to the generality of subsection (1) above, section 117 (Bridge to be built across River Aire) of the Act passed in the year 1828 and entitled “An Act to enable the Undertakers of the Navigation of the Rivers Aire and Calder, in the West Riding of the County of York, to make certain Cuts and Canals, and to improve the said Navigation” is hereby repealed.

40 Provisions as to part of navigation rendered unnecessary

Upon the opening to traffic of the new navigation—

- (a) all obligations of the Board to maintain the superseded length and any other obligations of the Board and any right of navigation or other right or permission which may exist in relation to or in connection with the superseded length or any other waterway within the limits of deviation shall be extinguished; and
- (b) the Corporation may, after consultation with the Board, fill in with spoil and other materials the site of the superseded length and adjoining lands in so far as the same are situate within the limits of deviation or within the lines marked on the deposited plans “Limit of land to be acquired”.

41 New navigation to be commercial waterway, etc

- (1) Subject to section 39 (As to navigation enactments) of this Act, as from a date to be agreed between the Corporation and the Board (or, failing agreement, to be determined by the Secretary of State on the application of either party, after notice in writing to the other) the new navigation shall be deemed to be part of so much of the navigation as is specified as a commercial waterway in Part I of Schedule 12 to the Transport Act 1968 and the channel for which the new navigation is substituted shall for all purposes cease to form part of the navigation and part of a commercial waterway.

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- (2) The Board shall not be required to enter into any agreement for the purposes of subsection (1) above, and the Secretary of State shall not give a determination for the purposes of that subsection, until the new navigation has been completed in accordance with plans approved or deemed to have been approved by the engineer under paragraphs (4) and (5) of section 32 (For protection of British Waterways Board) of this Act.
- (3) Without prejudice to the generality of subsection (2) above, it shall be the duty of the Corporation to construct the new navigation to such a standard as will enable the Board to comply with the duties which will apply to them in relation to the navigation as from the transfer date under section 105 of the Transport Act 1968 and the Board may refuse to enter into an agreement for the purposes of subsection (1) above, and the Secretary of State shall not give a determination for the purposes of that subsection, if it appears that the condition of the new navigation is not such as to enable the Board to comply with those duties.
- (4) As soon as practicable after the date agreed or determined under subsection (1) above the Corporation shall cause notice of that date to be published in the London Gazette and in one or more newspapers circulating in the area in which the said work is situated.
- (5) Nothing contained in or done under this section shall have the effect of—
 - (a) vesting any works or lands in the Board; or
 - (b) imposing on the Board any duty to maintain any works, lands or property, other than the duties applicable to the Board as from the transfer date in relation to the new navigation and arising under section 105 of the Transport Act 1968.

42 Management and transfer arrangements

- (1) Subject to section 41 (New navigation to be commercial waterway, etc.) of this Act, the Corporation may enter into and carry into effect agreements with other persons, on such terms and conditions as the Corporation think fit, with respect to—
 - (a) the construction, maintenance, use and operation of any of the works by any other person;
 - (b) the doing of anything which may be rendered necessary or convenient by reason or in consequence of the exercise of the powers of this Act; or
 - (c) the transfer or disposal to any other person of any of the works and any land held or used for or in connection therewith.
- (2) Any agreement under subsection (1) above may provide for the exercise of the powers of the Corporation in respect of the works or any part thereof and for any incidental, subsidiary and consequential matters including the defraying of, or the making of contributions towards, the cost of the matters aforesaid by the Corporation or any other person.
- (3) The exercise of the powers of any enactment by any person in pursuance of any agreement under subsection (1) above shall be subject to the same restrictions, liabilities and obligations as would apply under this Act or under any agreement or undertaking concerning the exercise of the powers of this Act if those powers were exercised by the Corporation.

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- (4) Any land transferred to a statutory undertaker pursuant to this section shall be deemed to be operational land of that undertaker for the purposes of the Town and Country Planning Act 1990.

43 Arbitration

Where under any provision of this Act any difference (other than a difference as to the meaning or construction of any such provision) is to be determined by arbitration, then such difference shall be referred to and settled 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.

44 Planning permission

- (1) In this section “Part 11 development” means development authorised by article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).
- (2) Subject to subsection (3) below, in its application to development authorised by this Act the planning permission, granted for Part 11 development shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.
- (3) Subsection (2) above shall not apply to the carrying out of any development consisting of the alteration, maintenance or repair of works or the substitution of new works therefor.

45 Costs of Act

All costs, charges and expenses of and incidental to the preparing for, obtaining and passing of this Act, or otherwise in relation thereto, incurred by the Corporation may, in whole or in part, be defrayed out of revenue.

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SCHEDULES

SCHEDULE 1

Section 5(1).

THE AUTHORISED WORKS

PART I

DESCRIPTION OF WORKS SPECIFICALLY AUTHORISED

In the city of Leeds and partly in the parish of Great and Little Preston—

Work No. 1 A new cut being a diversion of the river 3,886 metres in length commencing at reference point SE 4381 4285 and terminating at reference point SE 4410 4280 including a new weir or drop structure, a barge turning area and flood defences;

In the city of Leeds—

Work No. 2 A new cut being a diversion of the navigation 830 metres in length commencing at reference point SE 4380 4283 and terminating at reference point SE 4385 4276 by a junction with Work No. 1 including a new lock at reference point SE 4382 4279;

Work No. 3 A new road being a diversion of part of Fleet Lane commencing at reference point SE 4380 4282 and terminating at reference point SE 4382 4278;

Work No. 4 A new bridge over Work No. 1;

Work No. 5 A new bridge to the west of Shan House over Work No. 1;

Work No. 6 A new bridge to the west of Pit Lane over Work No. 1;

Work No. 7 A new wharf at reference point SE 4401 4278 including a coal loading point at Caroline Staithe;

In the city of Leeds and partly in the parish of Great and Little Preston—

Work No. 8 A flood defence being an extension of existing flood bunds at the Lowther washlands commencing at reference point SE 4400 4279 and terminating at reference point SE 4400 4281;

Work No. 9 A flood defence being a re-arrangement of existing flood bunds at the Lowther washlands commencing at reference point SE 4400 4279 and terminating at reference point 4405 4279;

In the city of Leeds—

Work No. 10 A new road being a diversion of part of Methley North Station Road commencing at reference point SE 4389 4273 and terminating at reference point SE 4392 4273;

Work No. 11 A new sewer being a diversion of the Mickletown to Lemonroyd sewer commencing at reference point SE 4379 4281 and terminating at reference point SE 4392 4273;

Work No. 12 An off-channel mooring facility commencing at reference point SE 4381 4281 and terminating at reference point SE 4380 4280;

Work No. 12A A bridge over the entrance to Work No. 12;

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Work No. 13 A new road being a diversion of part of Pit Lane commencing at reference point SE 4399 4277 and terminating at reference point SE 4399 4278.

PART II

DESCRIPTION OF FURTHER WORKS AND POWERS

In the city of Leeds—

- (a) A bridleway from point VV on Fleet Lane passing over Work No. 4 to point EEE;
- (b) A bridleway on the northern side of Work No. 1 between point FFF and point L;
- (c) A bridleway on the southern side of the new navigation from point GGG on Fleet Lane (Work No. 3), partly along the route of Work No. 10, to point HHH;
- (d) A bridleway and access track between point OO off Mickletown Road and point PP at a junction with the intended bridleway between points GGG and HHH;
- (e) A footpath between point MM off Hicks Lane and point DDD at a junction with the intended bridleway between points GGG and HHH;
- (f) A bridleway between point SS on Pit Lane and point III on the intended bridleway between points GGG and HHH;
- (g) A footpath over Work No. 5;
- (h) A bridleway over Work No. 6;
- (i) A new means of vehicular access to Fleet Lane at point VV for the purpose of the construction of the works;
- (j) Metalled access ways to the intended new lock forming part of Work No. 1 for use by maintenance vehicles, plant and emergency services, between points G and RRR and points PPP and QQQ;
- (k) A lock control cabin at point SSS;
- (l) Two lock houses at point TTT;
- (m) A sanitary station at point UUU.

SCHEDULE 2

Section 11(1).

STOPPING UP AND DIVERSION OF HIGHWAYS, ETC.

Highways, etc., to be stopped up (1)	New or diverted highways to be substituted (2)
(1) Fleet Lane, incorporating part of a footpath numbered 65 on the definitive map and following the course of the towpath for part of its length, between point A and point B.	Work No. 3.
(2) A byway between point C on Fleet Lane and point D on the southern towpath of the navigation.	Work No. 3.

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Highways, etc., to be stopped up (1)	New or diverted highways to be substituted (2)
(3) A footpath between point CC on Fleet Lane and point DD adjacent to a tunnel under the railway.	Work No. 3.
(4) A footpath between point DD and point EE on Fleet Lane.	Work No. 3.
(5) A footpath between point B on Fleet Lane and point DD.	Work No. 3.
(6) A footpath between point E on Fleet Lane and point F at Lemonroyd Lock.	The bridleway between points VV and EEE.
(7) A footpath following the course of the towpath for part of its length between point G on Fleet Lane and point H at Lemonroyd Lock.	The bridleway between points FFF and L.
(8) A footpath between point I north-east of Shan House and point J at Kippax Lock incorporating part of an un-numbered footpath on the definitive map.	The bridleway between points FFF and L.
(9) A footpath incorporating part of an un-numbered footpath on the definitive map between point K at the bridge over the river Aire along the northern bank of the river Aire and point L.	The bridleway between points FFF and L.
(10) A byway between point M and point N.	The bridleway between points FFF and L.
(11) A byway from point M passing along the northern side of the navigation, thence along the southern side of the former Astley Staithe Basin to point O.	The bridleway between points FFF and L.
(12) A footpath between point D on Fleet Lane and point CCC to the east of Pit Lane following the course of the towpath for part of its length and parts of the footpaths numbered 65 and 76 and an un-numbered footpath on the definitive map.	The bridleway between points GGG and HHH.
(13) A footpath between point P on Fleet Lane and point Q at Lemonroyd Lock.	The bridleway between points GGG and HHH.
(14) A footpath between point ZZ and point R on the southern towpath of the navigation.	The bridleway between points GGG and HHH.
(15) A footpath between point S and point T north-east of Shan House.	The bridleway between points GGG and HHH.
(16) A footpath between point U adjacent to the railway and point V.	The bridleway between points GGG and HHH.
(17) A footpath un-numbered on the definitive map between point W near Shan	The bridleway between points GGG and HHH.

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Highways, etc., to be stopped up (1)	New or diverted highways to be substituted (2)
House and point S on the southern towpath of the navigation.	
(18) A byway between point X on the southern towpath of the navigation and point Y on the northern side of the river Aire.	The bridleway between points GGG and HHH.
(19) A byway between point Z south of Caroline Bridge and point AA.	The bridleway between points GGG and HHH.
(20) A footpath between point V and point RR at Caroline Bridge.	The bridleway between points GGG and HHH.
(21) A byway between point AAA on the southern towpath of the navigation and point BBB.	The bridleway between points GGG and HHH.
(22) A byway and footpath (unnumbered) shown on the definitive map between point BB near Methley North Station and point FF on the southern towpath of the navigation.	The bridleway between points GGG and HHH.
(23) A footpath between point JJJ adjacent to the railway and point KKK on the southern towpath of the navigation.	The bridleway between points GGG and HHH.
(24) A footpath around the large basin between point LLL and point MMM.	The bridleway between points GGG and HHH.
(25) Part of Methley North Station Road and a bridleway numbered 48 on the definitive map and byway from point HH near Shan House passing points W and T to point II.	Work No. 10.
(26) A footpath and byway between point JJ near Victoria Place and point KK on the southern towpath of the navigation.	The bridleway between points OO and PP.
(27) A byway between point LL to the west of Mickletown Road and point M on the northern end of Caroline Bridge.	The bridleway between points OO and PP.
(28) A byway between point MM near Hicks Lane and point NN on the colliery spoil heap.	The footpath between points MM and DDD.
(29) A footpath between point QQ and point RR at the southern side of Caroline Bridge.	The footpath between points MM and DDD.
(30) Part of Pit Lane and a byway between point SS and point RR.	Work No. 13.
(31) A byway between point TT and point UU.	Work No. 13.
(32) An un-numbered footpath shown on the definitive map between point RR and point XX.	The bridleway between points SS and III.

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SCHEDULE 3

Section 21(4).

MODIFICATION OF PART I OF COMPULSORY PURCHASE ACT 1965 IN RELATION TO PURCHASE OF NEW RIGHTS

- 1 In the Compulsory Purchase Act 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 Corporation 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.
- (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 (hereinafter 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 that 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 Aire and Calder Navigation Act 1992 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 Aire and Calder Navigation Act 1992 is deemed to authorise the purchase of an interest by virtue of the preceding subsection shall be determined by the Tribunal.

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- (3) Where, in consequence of a determination of the Tribunal that it is satisfied as mentioned in subsection (1) of this section, the Aire and Calder Navigation Act 1992 is deemed by virtue of that subsection to authorise the purchase of an interest in land, the Corporation 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 Corporation to withdraw the notice.
- (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 “right proposed” and “right is”.
- 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);
 - paragraphs 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 Corporation.
- 4 Section 11 of the Act (powers of entry) shall be so modified as to secure that, as from the date on which the Corporation 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 inadvertence an interest in the land has not been purchased) shall be so modified as to enable the Corporation 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.