



# Midland Metro Act 1992

## 1992 CHAPTER vii

### PART IV

#### PROTECTIVE PROVISIONS

#### **22 For protection of British Railways Board**

For the protection of the British Railways Board (in this section referred to as “the railways board”) the following provisions shall, unless otherwise agreed in writing between the Executive and the railways board, have effect:—

(1) In this section—

“construction” includes placing, alteration and renewal;

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

“plans” includes sections, drawings, specifications and particulars (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 authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property:

(2) The Executive shall not under the powers of this Act acquire compulsorily any land or other property of the railways board, or any right in such land or other property, without the consent of the railways board, which consent shall not be unreasonably withheld:

(3) The Executive shall before commencing the construction of the specified works supply to the railways board proper and sufficient plans thereof for the approval of the engineer and shall not commence the construction of those works until such plans have been approved in writing by the engineer or settled by arbitration:

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Provided that approval of plans supplied under this paragraph shall not be unreasonably withheld and, if within 56 days after the plans have been supplied to the railways board the engineer has not notified his disapproval of the plans and the grounds of his disapproval, he shall be deemed to have approved the plans as supplied:

- (4) Where so required by the engineer, the plans of any specified work in respect of which an easement is acquired in or over railway property shall include provision for the fencing, to the reasonable satisfaction of the engineer, of any railway comprised in that work from any other railway property adjoining that work:
- (5) If within 56 days after such plans have been supplied to the railways board, the railways board give notice to the Executive 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 any existing railway or the safe operation of traffic on the railways of the railways board then, if the Executive 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 Executive in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (6) 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 specified works to ensure the safety or stability of the railways of the railways board and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Executive, if the railways board so desire, with all reasonable dispatch, and the Executive shall not commence the construction of the specified works until the engineer shall have notified the Executive that the protective works have been completed to his reasonable satisfaction:
- (7) The Executive shall give to the railways board not more than 6 months' and not less than 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property:
- (8) When the construction of any specified work is commenced it shall 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:
- (a) (a) If any damage to railway property or any such interference or obstruction shall be caused or take place, the Executive shall, notwithstanding any such approval as aforesaid, make good such damage and pay to the railways 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, interference or obstruction;

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- (b) Nothing in sub-paragraph (a) above shall impose any liability on the Executive with respect to any damage, cost, expense or loss which is attributable to the neglect or default of the railways board or their servants or agents:
- (10) The Executive shall—
  - (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction of those works:
- (11) The railways board shall—
  - (a) at all times afford reasonable facilities to the Executive and their agents for access to any works carried out by the railways board under this section during their construction; and
  - (b) supply the Executive with such information as they may reasonably require with regard to such works or the method of construction of those works:
- (12) If any alterations or additions, either permanent or temporary, to any existing railway of the railways board are reasonably necessary during the construction of the specified works, or during a period of 12 months after their completion, in consequence of the construction of the specified works, and the railways board give to the Executive reasonable notice of their intention to make such alterations or additions, the Executive shall pay to the railways board the reasonable cost thereof including, in the case 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 railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Executive to the railways board under this section:
- (13) The Executive 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 Executive as provided by paragraph (5) above or in constructing any protective works under the provisions of paragraph (6) above including, in respect of any permanent protective works, a capitalised sum representing the reasonable 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 railways and for preventing as far as may be 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—
    - (i) any speed restrictions which may, in the opinion of the engineer, be necessary by reason of the construction, maintenance, repair or failure of the specified works; or
    - (ii) the substitution, suspension or diversion of services which may be necessary for that reason;

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- (d) in respect of any additional temporary lighting of railways in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction, maintenance or failure of the specified works;
  - (e) in respect of the approval by the engineer of plans supplied by the Executive under paragraph (3) above and the supervision by him of the construction of the specified works:
- (14) If at any time after the completion of the construction of the specified works, not being works vested in the railways board, the railways board give notice to the Executive that the state of repair of the specified works appears to affect prejudicially any existing railway of the railways board, the Executive shall, on receipt of such notice, take such steps as may be reasonably necessary to remedy any such defect:
- (15) Before providing any illumination or illuminated traffic sign on or in connection with the specified works in the vicinity of any existing railway of the railways board, the Executive shall consult with the railways board and, subject to the approval of the Secretary of State, comply with their reasonable requirements 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:
- (16) If the cost to the railways board of altering any existing railway within its boundaries or of maintaining or reconstructing any existing railway, or any existing structure or installation provided in connection therewith, under any powers existing at the passing of this Act, is increased by reason of the existence of the specified works, any such additional expense reasonably so incurred by the railways board, after giving 56 days' notice to the Executive, shall be repayable by the Executive to the railways board:
- (17) (a) The Executive 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—
- (i) by reason of the construction, repair or failure of the specified works;  
or
  - (ii) by reason of any act or omission of the Executive or of any persons in their employ or of their contractors or others whilst engaged upon the construction or repair of the specified works;
- and the Executive shall indemnify the railways board from and against all claims and demands arising out of or in connection with the construction, repair or failure of the specified works or any such act or omission as aforesaid;
- (b) The fact that any act or thing may have been done by the railways board on behalf of the Executive 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 not attributable to the neglect or default of the railways board or of any person in their employ or of their contractors or agents) excuse the Executive from the liability under this paragraph;
  - (c) The railways board shall give to the Executive reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Executive:

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- (18) Any difference arising between the Executive 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.