



London Underground (Jubilee) Act 1993

1993 CHAPTER ix

PART IV

PROTECTIVE PROVISIONS

23 For protection of British Railways Board.

For the protection of the railways board the following provisions shall, unless otherwise agreed in writing between the Company and the railways board for the purposes of this section, have effect:—

(1) In this section—

“construction” includes reconstruction and, where the context so admits, maintenance and repair of the specified works;

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

“plans” includes sections, drawings, particulars and schedules of construction;

“railway property” means any railway of the railways board, and any works, apparatus and equipment connected therewith for the maintenance or operation of which the railways board are responsible when the relevant specified works are begun and includes any lands held or used by the railways board for the purposes of such railway or works; and

“the specified works” means such works as are carried out for the purposes mentioned in column (3) of Schedule 4 to this Act which are within 15 metres of railway property (measured in any direction) or as may in any way affect railway property;

(2) The Company shall not under the powers of this Act without the consent of the railways board acquire or enter upon, take or use, whether temporarily or permanently, or acquire any new rights in or subsoil of, railway property:

Provided that this paragraph shall not prevent the Company acquiring the interest of any person other than the railways board required for the purposes of this Act:

(3) The exercise by the Company against the railways board of the powers of—

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- (a) section 15 (Power to make trial holes) of the Act of 1963, as incorporated by section 13 (Incorporation of works provisions) of this Act; and
 - (b) section 21 (Power to enter for survey or valuation) of the Act of 1963, as incorporated by section 21 (Incorporation of lands provisions) of this Act;
- shall be confined to lands which the Company are empowered to acquire compulsorily under section 14 (Power to acquire lands) of this Act:
- (4) (a) The Company shall, before commencing the construction of the specified works, furnish to the railways board such proper and sufficient plans thereof as may reasonably be required by the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration as provided in sub-paragraph (b) below;
 - (b) The engineer's approval under sub-paragraph (a) above shall not be unreasonably withheld and any question of whether it has shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to the railways 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) If within 56 days after such plans have been furnished to the railways board the railways board give notice to the Company 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 and the safe operation of the railways of the railways board, then, if the Company desire such part of the specified works to be constructed, the railways board shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Company 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 stability of railway property, the continuation of safe and effective operation of the railways of the railways board, including any relocation of works, apparatus and equipment necessitated by the specified works and the comfort and safety of passengers using either the Waterloo or the London Bridge station of the railways board, and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board with all reasonable dispatch or, if the railways board so desire, such protective works shall be carried out by the Company at their own expense, and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been satisfactorily completed:
 - (7) The Company shall give to the engineer not less than 56 days' notice of their intention to commence the construction of any of the specified works and also, except in emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property:
 - (8) The construction of the specified works and of any protective works carried out by the Company by virtue of the provisions of paragraph (6) above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as

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little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of the railways board and the use by passengers of railway property and, if any damage to railway property or any such interference is caused by the carrying out of the specified works, the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall 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 or interference:

Provided that nothing in this paragraph shall impose any liability on the Company with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of the railways board or their servants or agents:

- (9) Without prejudice to the generality of paragraphs (6) and (8) above the railways board may, in approving the plans of or in supervising the carrying out of the specified works or of any protective works carried out by the Company by virtue of the provisions of paragraph (6) above, impose reasonable conditions with a view to ensuring that—
 - (a) nothing shall be done by or on behalf of the Company which impedes the free, uninterrupted and safe flow of passengers to and from the Waterloo or the London Bridge station of the railways board;
 - (b) dust sheets and other works and working methods are used so as to prevent so far as practicable any dust or dirt from the relevant works affecting such passengers; and
 - (c) adequate signing of all alterations of routes for passengers and of any hazards or obstructions to the free movement of passengers is provided;
- (10) The Company shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (11) During the construction of any works by the railways board under this section the railways board shall at all times afford reasonable facilities to the Company and their agents for access to those works, and shall supply the Company with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (12) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, by reason of the construction of the specified works, such alterations and additions may be carried out by the railways board and, if the railways board give to the Company reasonable notice of their intention to carry out such alterations or additions, the Company shall pay to the railways board the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the railways board in 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 Company to the railways board under this section:

 - (13) The Company shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—

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- (a) in constructing any part of the specified works on behalf of the Company 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 costs which may be expected to be reasonably incurred by the railways board in maintaining and renewing such works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
 - (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably 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 by reason of the construction or failure of the specified works;
 - (e) in respect of the supervision by the engineer of the construction of the specified works:
- (14) The Company 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) by reason of the construction of the specified works or the failure thereof;
 - (b) by reason of any act or omission of the Company or of any person in their employ, or of their contractors or others whilst engaged upon the construction of the specified works;
- and the Company shall indemnify the railways board from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done in accordance with the 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 act, neglect or default of the railways board, or of any person in their employ, or of their contractors or agents) excuse the Company from any liability under the provisions of this section:
- Provided that the railways board shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company:
- (15) Any difference arising between the Company and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be referred to and settled by arbitration.