



Tamar Bridge Act 1998

1998 CHAPTER iv

PART V

MISCELLANEOUS

36 For protection of Railtrack

For the protection of Railtrack the following provisions shall, unless otherwise agreed in writing between the Authorities and Railtrack PLC, have effect:—

(1) In this section—

“associated company of Railtrack PLC” means any company which is (within the meaning of section 736 of the Companies Act 1985) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

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

“the engineer” means an engineer to be appointed by Railtrack PLC;

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes;

“railway property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and includes any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

“the relevant works” means so much of the works, and, unless the context otherwise requires, so much of the bridge, as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property, and includes the maintenance, alteration, reconstruction and removal of such parts of such works and such part of the bridge:

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- (2) (a) The Authorities shall not under the powers of this Act acquire compulsorily any railway property but they may, with the consent of Railtrack PLC, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions, acquire such easements or other rights over or use such railway property as they may reasonably require;
- (b) The Authorities shall fence off on a temporary or permanent basis the relevant works from any railway of Railtrack to the reasonable satisfaction of the engineer where so required by him:
- (3) The Authorities shall not exercise the powers of section 11 (3) of the Act of 1965 in respect of any railway property except with the consent of Railtrack PLC which consent shall not be unreasonably withheld but may be given subject to reasonable conditions:
- (4) (a) Except with the consent of Railtrack PLC the Authorities shall not in the exercise of the powers of this Act prevent pedestrian or vehicular access to any railway property;
- (b) The provisions of section 8 (Private rights of way) of this Act shall not apply to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack PLC;
- (c) The consent of Railtrack PLC under this paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions:
- (5) The Authorities shall not in exercise of the powers of this Act to improve, alter, extend, renew, reconstruct or replace the bridge or any part thereof deviate laterally southwards from the line of the specified work shown on the deposited plan so that there shall be a distance of less than 50 metres between the respective centre lines along the length of the bridge and of Railtrack's Royal Albert Bridge:
- (6) The Authorities shall not in exercising any of the powers of this Act in relation to the easternmost abutment or anchorage of the works alter the footings thereof so that they are situate within a distance of less than three metres from the nearest rail of Railtrack's St. Budeaux Junction to Bere Alston and Gunnislake railway:
- (7) The Authorities shall before commencing construction of the relevant works supply to Railtrack PLC proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the relevant works until plans thereof have been approved in writing by the engineer or settled by arbitration:
- Provided that the approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if within 56 days after such plans have been supplied to Railtrack PLC the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:
- (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 relevant works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the relevant works) and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack or by the Authorities, if Railtrack PLC so desires, with all reasonable dispatch and the Authorities shall not commence the construction of the

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

relevant works until the engineer has notified the Authorities that the protective works have been completed to his reasonable satisfaction:

- (9) Blasting operations in connection with the works shall not be carried out except at such times and in such manner as the engineer may approve, which approval shall not be unreasonably withheld:
- (10) (a) The relevant works shall, when commenced, be constructed—
- (i) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
 - (ii) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
 - (iii) in such manner as to cause as little damage to railway property as may be; and
 - (iv) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack or the traffic thereon, the operation of any railway station 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 in consequence of the construction of the relevant works, the Authorities shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which Railtrack may sustain by reason of any such damage, interference or obstruction;
- (b) Nothing in this paragraph shall impose any liability on the Authorities with respect to any damage, cost, expense or loss which is attributable to the neglect or default of Railtrack or its servants or agents:
- (11) The Authorities shall—
- (a) at all times afford reasonable facilities to the engineer for access to the relevant works during their construction; and
 - (b) supply the engineer with all such information as he may reasonably require with regard to the relevant works or the method of construction thereof:
- (12) Railtrack shall at all times afford reasonable facilities to the Authorities and their agents for access to any works carried out by Railtrack under this section during their construction and shall supply the Authorities with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (13) (a) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the relevant works or during a period of 12 months after the completion thereof in consequence of the construction of the relevant works, and Railtrack PLC gives to the Authorities reasonable notice of Railtrack's intention to carry out such alterations or additions, specifying the alterations or additions to be carried out, the Authorities shall pay to Railtrack PLC the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions;
- (b) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph (14) (a) below, provide such details of the formula

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

- by which those sums have been calculated as the Authorities may reasonably require;
- (c) 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 Authorities to Railtrack PLC under this paragraph:
- (14) The Authorities shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—
- (a) in constructing any protective works under the provisions of paragraph (8) above 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 reasonably practicable interference, obstruction, danger or accident arising from the construction, maintenance, or failure of the relevant works;
- (c) in respect of any special traffic working resulting from any speed restrictions which are necessary as a result of the construction, maintenance, or failure of the relevant 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 reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the relevant works being lighting made reasonably necessary as a result of the relevant works or the failure thereof;
- (e) in respect of the approval by the engineer of plans submitted by the Authorities and the supervision by him of the construction of the relevant works:
- (15) If at any time after the completion of the relevant works Railtrack PLC gives notice to the Authorities informing them that the state of maintenance of the relevant works appears to be such as adversely affects the operation of railway property, the Authorities shall, on receipt of such notice, take such steps as may be reasonably necessary to put the relevant works in such state of maintenance as not adversely to affect railway property:
- (16) All temporary structures, erections, works, apparatus and appliances erected or placed by the Authorities under the powers of this Act or the Act of 1957 upon, over or under any railway of Railtrack shall, as soon as reasonably practicable, be removed by the Authorities 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 Railtrack 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 Authorities shall forthwith make good such damage and pay to Railtrack PLC the reasonable costs and expenses to which Railtrack may be put and reasonable compensation for any loss which Railtrack may sustain by reason of such damage, interference, delay and interruption:
- (17) Before providing any illumination or illuminated traffic sign on or in connection with the relevant works the Authorities shall consult with Railtrack PLC and comply, save as otherwise directed by the Secretary of State or the Corporation of Trinity House of Deptford Strond, with its reasonable requirements in regard thereto with a view to ensuring that such illumination or illuminated sign could not be confused with any

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

railway signal or other light for controlling, directing or securing the safety of traffic on the railway:

- (18) Any additional expenses which Railtrack may reasonably incur after giving 56 days' notice to the Authorities in altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act by reason of the existence of the relevant works shall be repaid by the Authorities to Railtrack PLC:
- (19) (a) The Authorities shall be responsible for and make good to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, Railtrack—
- (i) by reason of the construction or maintenance of the relevant works or the failure thereof; or
 - (ii) by reason of any act or omission of the Authorities or of any person in their employ or of their contractors or others whilst engaged upon the relevant works;
- and the Authorities shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the relevant 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 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 Railtrack or of any person in its employ or of its contractors or agents) excuse the Authorities from any liability under the provisions of this paragraph;
- (b) Any liability of the Authorities under this paragraph shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the neglect or default of Railtrack or of any person in its employ, or of its contractors or agents;
 - (c) Railtrack PLC shall give to the Authorities reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Authorities:
- (20) (a) The compensation payable under paragraph (19) above shall include a sum equivalent to the relevant costs;
- (b) Subject to the terms of any agreement made between Railtrack and the relevant train operators regarding the terms of payment of the relevant costs in respect of that train operator, Railtrack shall promptly pay to each train operator the amount of any compensation which Railtrack PLC receives under this paragraph which relates to the relevant costs of that train operator;
 - (c) In this paragraph “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of use of Railtrack’s railway network as a result of the construction or maintenance or failure of the relevant works or any such failure, act or omission as mentioned in paragraph (19) above;
 - (d) The obligation under this paragraph to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable direct by the train operators concerned:
- (21) In the assessment of compensation payable under this section there shall not be taken into account any enhancement of that compensation attributable to any action taken by or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

compensation or increased compensation and for the avoidance of doubt any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this section:

- (22) The Authorities and Railtrack may enter into, and carry into effect, agreements for the transfer to the Authorities of—
- (a) any railway property shown on the deposited plan and described in the book of reference;
 - (b) any lands, works or other property held in connection with any such railway property; and
 - (c) any rights and obligations (whether or not statutory) of Railtrack relating to any railway property:
- (23) Any difference arising between the Authorities and Railtrack under this section (other than a difference as to its meaning or construction) shall be determined by arbitration:
- (24) As between the Authorities and Railtrack, section 65 (For protection of British Railways Board) of the Act of 1957 shall cease to have effect.