



# British Railways (No. 2) Act 1992

## 1992 CHAPTER xi

### PART I

#### PRELIMINARY

#### 1 Short title

this act may be cited as the British Railways (No. 2) Act 1992.

#### 2 Interpretation

(1) In this Act, unless the context otherwise requires, words and expressions to which meanings are assigned by the enactments incorporated herewith have in relation to the related subject-matter the same respective meanings; and—

“the Act of 1845” means the Railways Clauses Consolidation Act 1845;

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

“the Board” means the British Railways Board;

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

“the existing railway” means the railway between Reading and Paddington;

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

“the tribunal” means the Lands Tribunal; and

“the works” means the works authorised by Part II (Works, etc.) of this Act.

(t) (a) Except as mentioned in paragraph (b) below, all 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 direction, distance and length and distances between points on a railway shall be taken to be measured along the railway.

(b) This subsection shall not apply to the distances in the following provisions of this Act:—

(i) subsection (2) of section 6 (Dimensions of bridges at Langley); and

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(ii) subsection (1) of section 24 (Headway of bridge at Gainsborough).

- (3) 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.
- (4) References in this Act to points identified by letters shall be construed as references to the points so lettered on the deposited plans.
- (5) References in this Act to access to any place shall include reference to egress from that place.

### **3 Incorporation of general enactments**

- (1) The following enactments, so far as the same are applicable for the purposes of and are not inconsistent with this Act, are incorporated with this Act, and this Act shall be the special Act for the purposes of the said incorporated enactments:—
  - (a) the Act of 1845, except sections 1, 7, 8, 9, 11, 12, 15, 17, 19, 20, 22 and 23 thereof; and
  - (b) in the Railways Clauses Act 1863, Part I (relating to the construction of a railway), except sections 14 to 17 thereof and Part II (relating to extension of time).
- (2) (a) For the purposes of the enactments incorporated by subsection (1) above—
  - (i) the expression “the company” where used in those enactments means the Board;
  - (ii) Works Nos. 2A, 2B, 2C and 15 shall be deemed to be railways authorised by the special Act.
- (b) For the purposes of sections 16 and 30 to 44 of the Act of 1845, as incorporated by subsection (1) above, Works Nos. 13A and 14A shall be deemed to be railways authorised by the special Act.
- (c) Sections 18 and 21 of the Act of 1845, as incorporated by subsection (1) above, shall not extend to regulate the relations between the Board and any other person in respect of any matter or thing concerning which those relations are regulated in any respect—
  - (i) until the commencement of Part III of the New Roads and Street Works Act 1991, by the provisions of Part II of the Public Utilities Street Works Act 1950 or, on the commencement of Part III of the said Act of 1991, by the provisions of that Part of that Act; or
  - (ii) by section 39 (For protection of electricity, gas and water undertakers) of this Act.

### **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), so far as it is applicable for the purposes of and is not inconsistent with this Act, shall apply to the compulsory purchase of land under this Act as it applies to a compulsory purchase to which 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 14 days' notice), as so applied, for the words “fourteen days” there shall be substituted “three months”.

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

## PART II

### WORKS, ETC.

#### *works*

## 5 Power to make works

The Board may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the works described in Schedule 1 to this Act with all necessary works and conveniences connected therewith.

*Provisions relating to Works Nos. 2B and 2C*

## 6 Dimensions of bridges at Langley

- (1) In this section—

“Station Road Bridge” means the bridge composed of two spans at Langley in the borough of Slough carrying the existing railway over Station Road; and

“Chequer Bridge” means the bridge at Langley carrying the existing railway over Market Lane and Hollow Hill Lane.

- (2) Notwithstanding anything in the Act of 1845 or in any other enactment, the Board may—

- (a) maintain Station Road Bridge and construct the widenings thereof comprised in Work No. 2B at clear heights above the surface of the road of not less than 3.85 metres; and
- (b) maintain Chequer Bridge and construct the widening thereof comprised in Work No. 2C at a clear height above the surface of the road of not less than 4 metres.

*Provisions relating to Work No. 7*

## 7 Appropriation of works for Work No. 7

- (1) In this section—

“the Act of 1863” means the London and North-western Railway (Additional

“the viaduct” means the viaduct formerly carrying the Kirkburton branch railway over the Huddersfield Broad Canal, Ashgrove Road and the river Colne at Deighton in the metropolitan borough of Kirklees authorised by the Act of 1863.

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- (2) If the Board proceed with the construction of Work No. 7 they may hold, use and appropriate the viaduct for the purposes of Work No. 7 and shall be relieved of the obligation to maintain the viaduct for the purposes of the Act of 1863.
- (3) Subject to subsection (2) above, all the powers and obligations conferred or imposed upon the Board by the Act of 1863 in relation to the viaduct shall cease to have effect.
- (4) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

*Provisions relating to Works Nos. 9 and 10*

**8 Level crossing of Brinsworth Street, Rotherham, by Works Nos. 9 and 10**

- (1) In this section “the level crossing” means the level crossing known as Brinsworth Street crossing in the metropolitan borough of Rotherham whereby Brinsworth Street is crossed by the railway known as Holmes Chord.
- (2) The Board may, in the construction of Works Nos. 9 and 10, carry the same with an aggregate of not more than two lines of railway across and on the level of Brinsworth Street at the level crossing and, for that purpose, may modify the level crossing on any of the land numbered on the deposited plans 14 and 15 in the said metropolitan borough.
- (3) The provisions of subsections (2) to (5) of section 9 (Power to cross road on level) of the British Railways Act 1981 shall apply to the level crossing as modified under subsection (2) above as they apply to the level crossing as at the date of the passing of this Act.

*Provisions relating to Works Nos. 13 and 13A*

**9 Stopping up portion of Whinny Hagg Lane, Hambleton**

The Board may, upon the completion and opening for public use of Work No. 13A, stop up and discontinue so much of Whinny Hagg Lane in the parish of Hambleton, district of Selby, as lies between points A and B.

*Provisions relating to Works Nos. 14 and 14A*

**10 Stopping up portion of Little Heck Common Lane and new bridleway at Hensall**

- (1) In this section—“the bridleway” means a new bridleway in the parish of Hensall, district of Selby, between points E, B, C and F; and  
“the road” means so much of Little Heck Common Lane in the said parish of Hensall as lies between points A, B, C and D.
- (2) The Board may—
  - (a) form and lay out means of temporary vehicular access at point G from the road, for the purpose of constructing Works Nos. 14 and 14A, or either of them;

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- (b) upon the completion and opening for public use of Work No. 14A—
  - (i) stop up and discontinue the road;
  - (ii) make the bridleway; and
  - (iii) form and lay out means of access to the bridleway at point E from Gowdall Road.

*Provisions relating to Work No. 15*

**11 Platform extensions at Elephant & Castle station**

In the construction of Work No. 15, the Board may at Elephant & Castle station construct and maintain platform extensions on so much of the land numbered on the deposited plans 1 to 3 in the London borough of Southwark as lies between the lines marked “Extent of viaduct widening” on the deposited plans, with all necessary works and conveniences connected therewith.

*Other station works*

**12 Works at Langley, Iver and West Drayton stations**

- (1) In this section “the station works” means the alteration of—
  - (a) Langley station on so much of the land numbered on the deposited plans 19 in the borough of Slough, Berkshire, as lies within the line marked “Limit of land to be used” on the deposited plans, in connection with the construction and use of Work No 2; and
  - (b)
    - (i) that part of Iver station on the land numbered on the deposited plans 4 in the parish of Iver, district of South Bucks, Buckinghamshire, which lies within the line marked “Limit of land to be used” on the deposited plans; and
    - (ii) that part of West Drayton station on so much of the land numbered on the deposited plans 1 in the London borough of Hillingdon as lies within the line marked “Limit of land to be used” on the deposited plans;

in connection with the adaptation of the up (Iver to West Drayton) goods loop line of the existing railway for use by passenger trains.
- (2) The Board may on any, or any part, of the said lands construct and maintain the station works with all the necessary works and conveniences connected therewith.

**13 Platform extension at Braintree station, Essex**

- (1) In this section the “accommodation road” means the private road in the district of Braintree, Essex, linking the road known as Station Approach with land on the south side of the railway at Braintree station by means of a level crossing.
- (2) Subject to subsection (3) below, the Board may—
  - (a) stop up and discontinue the accommodation road between points A and B; and
  - (b) construct and maintain a platform extension with all necessary works and conveniences connected therewith at Braintree station on any part of the land

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numbered on the deposited plans 2 in the district of Braintree lying within the line marked “Limit of platform extension” on the deposited plans.

- (3) The stopping up and discontinuance of the accommodation road under subsection (2) (a) above shall not take place until the Board have provided and made available to the lawful users of the accommodation road—
- (a) a new private road between points C and B; and
  - (b) means of vehicular access from Station Approach to that new road over the land numbered on the deposited plans 1 in the district of Braintree.

### *Level crossings*

## **14 New level crossing at Northampton**

- (1) In this section—
- “the council” means Northamptonshire County Council;
  - “the new level crossing” means a new level crossing in the borough of Northampton, Northamptonshire, whereby a new road linking St. James Mill Road with St. James Mill Road East, proposed to be constructed by the council, will cross the railway between Northampton station and Bridge Street at Ordnance Survey National Grid reference point SP 7473 : 5971 or in the vicinity thereof; and
  - “traffic sign” has the meaning assigned to it by section 64 of the Road Traffic Regulation Act 1984.
- (2) The Board and the council may enter into and carry into effect agreements—
- (a) for the construction of the new level crossing; and
  - (b) for defraying, or making contributions towards, the cost of constructing, maintaining and renewing the new level crossing and any other matters relating thereto.
- (3) (a) The Board may, subject to such requirements as the Secretary of State may from time to time lay down, provide, maintain and operate at or near the new level crossing such barriers, lights, traffic signs and automatic or other devices and appliances as may be approved by the Secretary of State.
- (b) Section 65 (1) of the Road Traffic Regulation Act 1984 (placing of traffic signs by highway authorities) shall have effect with respect to the erection and display of any traffic sign by the Board as if it were a traffic sign erected and displayed by a highway authority.

### *General works provisions*

## **15 Power to deviate**

In the execution of the works the Board may deviate from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards or to such further extent as may be approved by the Secretary of State.

## **16 Stopping up highways in case of diversion or substitution**

- (1) Where this Act authorises the making of a new highway, either by way of diversion of, or in substitution for, an existing highway and the stopping up of an existing highway or part thereof, the stopping up of the existing highway shall not in either case take place until—
  - (a) the highway authority are satisfied that the new highway has been completed in accordance with their reasonable requirements and is open for public use; or
  - (b) in the case of any difference between the Board and the highway authority as to whether the said requirements have been complied with or as to their reasonableness, the matter in dispute has been referred to and settled by arbitration.
- (2) Before referring a matter to arbitration under this section, the Board shall give to the highway authority seven days' notice in writing of their intention to do so.
- (3) As from the completion of the new highway to the satisfaction of the highway authority or, in case of dispute, in accordance with the decision of the arbitrator, all rights of way over or along the existing highway or part thereof authorised to be diverted or stopped up shall be extinguished.
- (4) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

## **17 Appropriating sites of highways**

After a highway or part thereof is permanently stopped up under this Act, the Board may, subject to the provisions of the Act of 1845 with respect to mines lying under or near the railway, so far as the said highway or part thereof is bounded on both sides by lands of the Board, appropriate the site thereof without making any payment therefor and use it for the purposes of their undertaking.

## **18 Repair of highways**

Any highway or part thereof made, diverted or altered under this Act (except the structure carrying any such highway over any railway of the Board) shall when completed, unless otherwise agreed, be maintained by and at the expense of the highway authority.

## **19 Agreements with highway authorities**

- (1) Where a highway or part thereof is altered or stopped up or interfered with under this Act, the Board may enter into and carry into effect agreements with the highway authority with respect to such alteration, stopping up or interference, or the construction of any new highway to be made under this Act, contributions to the costs thereof or any other matters relating thereto.
- (2) The Board may by agreement delegate to the highway authority the power of constructing and maintaining any such alterations or new highway, including the structure of any bridge over or under any railway.
- (3) The purposes of this section shall be deemed to be purposes for which a highway authority may incur expenditure and borrow money.

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## 20 Temporary stoppage of highways

- (1) The Board, during and for the purpose of the execution of the works, may temporarily stop up and divert and interfere with any highway and may for any reasonable time divert the traffic therefrom and prevent all persons other than those going bona fide to any land, house or building abutting on the highway from passing along and using the same.
- (2) The Board shall provide reasonable access for persons on foot going bona fide to any such land, house or building.
- (3) The Board shall not exercise the powers of this section without the consent of the highway authority but such consent shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld shall be referred to and settled by arbitration.

## 21 Underpinning of buildings near works

The Board may at their own expense, subject as hereinafter provided, underpin or otherwise strengthen any house or building within 35 metres of any of the works and the following provisions shall have effect:—

- (1) At least 14 days' notice shall (except in case of emergency) be given to the owner, lessee and occupier of the house or building intended to be so underpinned or otherwise strengthened:
- (2) Each such notice shall be served in a manner prescribed by section 6 of the Acquisition of Land Act 1981 as if required to be served under that Act:
- (3) If any owner, lessee or occupier of any such house or building shall, within 10 days after the giving of such notice, give a counter-notice in writing that he disputes the necessity of such underpinning or strengthening, the question of the necessity shall be settled by arbitration and, if the arbitrator decides that such underpinning or strengthening is not necessary, the Board shall not proceed therewith:
- (4) In any case in which any house or building shall have been underpinned or strengthened under the powers of this section the Board may, from time to time after the completion of such underpinning or strengthening, and during the execution of the work in connection with which such underpinning or strengthening was done, or within five years after the opening for traffic of that work, enter upon and survey such house or building and, after complying with the foregoing provisions of this section, do such further underpinning or strengthening as they may deem necessary or expedient:
- (5) The Board shall be liable to compensate the owner, lessee and occupier of every such house or building for any loss or damage which may result to them by reason of the exercise of the powers of this section:
- (6) Nothing in this section shall affect liability to compensate under section 6 of the Act of 1845, as incorporated with this Act, or section 10 (2) of the Act of 1965, as applied by this Act, or under any other enactment in respect of loss or damage arising from the execution of any works, except so far as compensation is payable under paragraph (5) above:
- (7) Every case of compensation to be ascertained under this section shall be ascertained according to the provisions of the Land Compensation Act 1961.



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## **22 Use of sewers, etc., for removing water**

- (1) In this section “relevant authority” means a sewerage undertaker, the National Rivers Authority, an internal drainage board or a local authority.
- (2) The Board 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 Board shall not—
  - (a) discharge any water into any sewer or drain vested in or under the control of a relevant authority except with the consent of that authority, which consent shall not be unreasonably withheld, and subject to such terms and conditions as that 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 shall be vested but approval of those plans by that authority shall not be unreasonably withheld.
- (4)
  - (a) Section 85 of the Water Resources Act 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 Board 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 Water Resources Act 1991.
- (5) The Board 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 Board and a relevant authority under this section shall be referred to and settled by arbitration.

## **PART III**

### **RIVER BRIDGE AT GAINSBOROUGH**

## **23 Interpretation of Part III**

in this part of this act—

“the bridge” means the bridge of the board at gainsborough, partly in the parish of bole, district of bassetlaw, nottinghamshire, and partly in the district of west lindsey, lincolnshire, which carries the railways linking doncaster and retford with gainsborough over the river;

“the level of high water” means the level of mean high-water springs;

“the new span” means a new bridge span positioned on the existing piers of the bridge;

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“the river” means the river trent; and  
 “the specified works” means the removal by the board of the existing span of the bridge and the positioning of the new span under their existing powers.

## **24 Headway of bridge at Gainsborough**

- (1) Notwithstanding anything in section 92 (Regulating Construction of Bridge over the Trent for the Main Line) of the Manchester, Sheffield, and Lincolnshire Railway Act 1849, the Board may position the new span so as to leave a headway—
  - (a) above the level of high water of the navigable waterway of the river of not less than 5 metres; and
  - (b) above the haling path on the north-east bank of the river of not less than 4·1 metres.
- (2) (a) Sections 91 (Nothing to diminish rights of the River Trent Navigation Company, and for preventing Obstructions to the River Trent) and 96 (Providing Remedy in case of Obstruction to the River Trent) of the said Act of 1849 and section 26 (For protection of the Trent Navigation Company) of the Manchester, Sheffield and Lincolnshire Railway Act 1895 shall cease to have effect in relation to the bridge.
- (b) The said section 92 and section 97 (Recovery of costs, &c. for Obstructions by reason of the crossing of the Main Line) of the said Act of 1849 shall cease to have effect.

## **25 Subsidiary works in river Trent**

- (1) Subject to subsection (2) below, the Board may in connection with the specified works, or at or near the bridge, upon any part of the land numbered on the deposited plans 3 in the parish of Bole, district of Bassetlaw, and 1 in the district of West Lindsey within the lines marked “Limit of temporary working site” on the deposited plans—
  - (a) execute and place temporarily in the river all such further works and conveniences as they find necessary or expedient; and
  - (b) dredge the river—
    - (i) to such extent as may be necessary; or
    - (ii) for the purpose of preserving uninterrupted navigation along the river beneath, and in the vicinity of, the bridge;
 and may use, sell or otherwise dispose of or remove or deposit any materials taken up or collected by means of dredging as they think fit.
- (2) In the exercise of the powers conferred by subsection (1) above the Board shall ensure, so far as is reasonably practicable, that—
  - (a) any works executed or maintained by them shall not unnecessarily narrow or obstruct the navigable waterway of the river or otherwise unnecessarily interfere with or impede navigation or unnecessarily obstruct the flow of water or the passage of fish;
  - (b) no materials taken up or collected in the course of any dredging operations shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the British Waterways Board.

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- (3) On the completion of the specified works the Board shall remove all temporary works placed by them in the river.

## PART IV

### LAND

#### *Purchase of land, etc.*

#### **26 Purchase of land**

- (1) The Board 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 purpose of the works or for any purpose connected with or ancillary to their undertaking.
- (2) Without prejudice to the generality of subsection (1) above, the Board may purchase compulsorily and use for the purposes specified in column (3) of Part I of Schedule 2 to this Act all or any of the land referred to in columns (1) and (2) of that
- (3) The Board may enter upon, use and appropriate so much of the subsoil and undersurface of, or airspace over, 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, thereunder or thereover or to make any payment therefor.
- (4) The Board shall not exercise the powers of this section or section 27 (Purchase of rights over land) of this Act in relation to any land to which section 29 (Temporary use of land) of this Act applies.

#### **27 Purchase of rights over land**

- (1) In this section references to the purchase by the Board of new rights are references to the purchase of rights to be created in favour of the Board.
- (2) Subject to the provisions of this Act, the Board may for the purpose of constructing, maintaining, protecting, altering, renewing and using the works, or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works, purchase compulsorily such new rights as they require in or over any of the land delineated on the deposited plans and described in the deposited book of reference instead of purchasing that land under section 26 (Purchase of land) of this Act.
- (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 in or over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.

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- (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.

## **28 Purchase of specific new rights over land**

- (1) Section 27 (Purchase of rights over land) of this Act shall have effect for enabling the Board to purchase such further new rights as they require under this section.
- (2) The Board may, in addition to such new rights as they may purchase under the said section 27 of this Act, purchase such new rights as they require in or over any of the lands shown on the deposited plans within the lines marked “Limit of easement to be acquired” or “Limit of land required for temporary access” and specified in Part II of Schedule 2 to this Act for the provision of means of access to the highways there mentioned.

## **29 Temporary use of land**

The provisions set out in Part III of Schedule 2 to this Act shall have effect with respect to the temporary use of land by the Board for working sites.

### *General lands provisions*

## **30 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.
- (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, 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 Board a counter-notice objecting to the sale of the part and stating that he is willing and able to sell the whole (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 Board 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 such detriment 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

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of the land subject to the counter-notice or, as the case may be, without such detriment 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 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 Board are authorised to purchase compulsorily under this Act.
- (6) If the Board 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 such detriment 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 Board 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 Board 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 case of dispute by the tribunal:

Provided that the determination of the tribunal shall not be deemed to be made so long as—

- (a) the time for requiring the tribunal to state a case with respect thereto has not expired and any proceedings on the points raised by a case so stated have not been concluded; or
  - (b) any proceedings on appeal from any decision on the points raised by a case so stated have not been concluded.
- (8) (a) Where a person is required under this section to sell part only of a house, building or factory, or land consisting of a house, together with any park or garden belonging thereto, the Board 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.
- (b) Any dispute as to a person's entitlement to compensation under this section or as to the amount of compensation shall be determined by the tribunal.

### **31 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

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- (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.

### **32 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 Board may take temporary possession under this Act shall be suspended and unenforceable against the Board for so long as the Board 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 Board compensation, to be determined in case of dispute by the tribunal.

### **33 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 Board 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.
- (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 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 Board to take the land 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.

### **34 Cellars under streets not referenced**

Nothing in this Act shall authorise the Board to purchase compulsorily or use (except by agreement) any cellar or vault in or under any street belonging to or connected with

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any building unless the cellar or vault or the building with which it is connected is described in the deposited book of reference.

### **35 Set-off for enhancement in value of retained land**

- (1) In this section “relevant land” means any land purchased, or any land in or over which any new rights are purchased, by the Board for the purposes of the works.
- (2) In assessing the compensation payable to any person on the purchase by the Board from him of any relevant land or any rights therein, the tribunal shall—
  - (a) have regard to the extent to which the land or the remaining contiguous lands belonging to the same person may be benefited by any of the works; and
  - (b) set off against the value of the relevant land any increase in value of the remaining contiguous lands belonging to the same person which will accrue to him by reason of the construction of any of the works.
- (3) The Land Compensation Act 1961 shall have effect subject to the provisions of this section.

### **36 Time for purchase of land and rights over land**

The powers of the Board for the compulsory purchase of land and rights in or over land under this Act shall cease on 31st December 1995.

#### *Extension of time*

### **37 Extension of time**

The period now limited for the exercise by the Board of the powers of section 30 (Temporary possession of lands and access at Basingstoke and Wandsworth) of the British Railways Act 1986 in their application to the temporary possession of lands and access in the London borough of Wandsworth is hereby extended until 31st December 1995.

## **PART V**

### **PROTECTIVE PROVISIONS**

### **38 Notice of interference with roads**

Before breaking up or otherwise interfering with any road to which the public has access in connection with the construction of any of the works under the powers of this Act, the Board shall (except in case of emergency) give 14 days' notice in writing to the chief officer of police.

### **39 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 Board and the undertakers concerned, have effect:—

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(1) In this section—

“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 the Electricity Act 1989) belonging to or maintained by such undertakers; or

(b) in the case of gas or water undertakers, any mains, pipes or other apparatus belonging to or maintained by such undertakers;

(not being in either case apparatus in respect of which the relations between the Board and the undertakers are regulated by, until the commencement of Part III of the New Roads and Street Works Act 1991, the provisions of Part II of the Public Utilities Street Works Act 1950 or, on the commencement of Part III of the said Act of 1991, by the provisions of that Part of that Act) 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, in any area within which the Board are by this Act authorised to purchase land or execute works, an undertaking for the supply of gas or water or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained:

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 20 (Temporary stoppage of highways) 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 highway 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 highway:

(3) The Board, in the case of the powers conferred by section 21 (Underpinning of buildings near works) of this Act, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers shall be caused, the Board shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply; and shall—

(a) make reasonable compensation to the undertakers for any loss sustained by them; and

(b) indemnify the undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertakers;

by reason or in consequence of any such damage or interruption:

Provided that—



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- (i) nothing in this paragraph shall impose any liability on the Board with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen;
  - (ii) the undertakers shall give to the Board reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Board:
- (4) Notwithstanding anything in section 22 (Use of sewers, etc., for removing water) of this Act, no use shall be made by the Board in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water, and until the commencement of Part III of the New Roads and Street Works Act 1991 the provisions of section 26 of the Public Utilities Street Works Act 1950 shall apply to, and in relation to, the laying down, taking up or altering of conduits, pipes or other works under the said section 22 as if executed by the Board as operating undertakers within the meaning of the said section 26 for purposes other than the purposes of a railway undertaking:
- (5) Notwithstanding anything in this Act or shown on the deposited plans the Board shall not acquire any apparatus under the powers of this Act otherwise than by agreement.
- (6) If the Board, 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:
- (7) If the Board, 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 shall give to the undertakers 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 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 shall reasonably require to remove any apparatus, the Board shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Board 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 Board, or the Board 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 Board, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:
- (8)
  - (a) Any alternative apparatus to be constructed in land of the Board under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Board or in default of agreement settled by arbitration;
  - (b) The undertakers shall, after the alternative apparatus to be provided or constructed shall have been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred

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to in paragraph (7) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Board to be removed under the provisions of this section:

- (9) Notwithstanding anything in paragraph (8) above, if the Board 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 Board, such work, in lieu of being executed by the undertakers, shall be executed by the Board 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 Board to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus:

- (10) Where, in accordance with the provisions of this section, the Board afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Board 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 Board and the undertakers or in default of agreement settled by arbitration:

Provided that—

- (a) in settling such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along any railway of the Board, the arbitrator shall—
    - (i) give effect to all reasonable requirements of the Board for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Board or the traffic on the railway; 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 railway for which the alternative apparatus is to be substituted;
  - (b) if the facilities and rights to be afforded by the Board 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 Board to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the particular case:
- (11) (a) Not less than 28 days before commencing to execute any such works as are referred to in paragraph (7) above and are near to or will or may affect any apparatus the removal of which has not been required by the Board under the said paragraph (7), the Board shall submit to the undertakers a plan, section and description of the works to be executed;

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- (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 14 days after the submission to them of any such plan, section and description shall, in consequence of the works proposed by the Board, reasonably require the removal of any apparatus and give written notice to the Board of such requirement, the foregoing provisions of this section shall apply and have effect as if the removal of such apparatus had been required by the Board under the said paragraph (7);
    - (ii) nothing in this sub-paragraph shall preclude the Board from submitting at any time or from time to time, but in no case less than 28 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 Board 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:
- (12) Where, in consequence of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway 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 affect any right of the Board or of the undertakers to require removal of such apparatus under this section or the power of the Board to execute works in accordance with paragraph (11) above:
- (13) Subject to paragraph (14) below, the Board 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 (7) 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;

by reason or in consequence of the execution, maintenance, user or failure of any such works or otherwise by reason or in consequence of the exercise by the Board of the powers of this Act:

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- (14) If the cost of maintaining, using, repairing or renewing any apparatus is reduced in consequence of any of the works, including the provision of alternative apparatus under this section, a capitalised sum representing such saving shall be paid by the relevant undertakers to the Board or set off against any sums payable by the Board to the relevant undertakers under this section:
- (15) Where, by reason of the stopping up of any highway under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Board shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Board) 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 of such apparatus being so rendered derelict or unnecessary:  
  

Provided that the Board 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 shall at the expense of the Board have been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:
- (16) Any difference arising between the Board and the undertakers under this section shall be referred to and settled by arbitration:
- (17) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the undertakers in respect of any apparatus laid or erected in land belonging to the Board at the date of the passing of this Act.

#### **40 For protection of sewerage undertakers**

For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between the Board and the sewerage undertaker concerned, have effect:—

- (1) In this section—
  - “the company” means the sewerage undertaker for the area of the works or whose sewers are affected;
  - “construction” includes placing or altering; and “constructed” shall be construed accordingly;
  - “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; and
  - “specified work” means so much of the works 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:
- (2) (a) Before commencing the construction or renewal of any specified work or, in the case of any temporary work, its removal the Board shall submit to the company plans thereof as described in paragraph (3) below (in this section referred to as “the said plans”) and shall not commence that work until the company has signified in writing its approval of the said plans;
- (b) Any approval of the company required under this paragraph—
  - (i) may be given subject to reasonable conditions;

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- (ii) shall not be unreasonably withheld;
  - (iii) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval:
- (3)
  - (a) The plans to be submitted to the company shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the company within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which the Board may propose to any such sewers;
  - (b) For the purpose of the preparation of the said plans the company shall permit the Board to have access to plans in its possession and to any of its sewers:
- (4) The company may require such modifications to be made to 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 proper and convenient means of access to any sewer:
- (5) The specified work shall be constructed, or (in the case of any temporary work) removed, in accordance with the plans approved, or deemed to have been approved, as aforesaid or settled by arbitration, as the same may be amended from time to time by agreement between the Board and the company, and in the construction or removal of the specified work the Board shall comply with all reasonable requirements of the company and shall provide new, altered or substituted sewers or works for the protection of any sewers of the company, in such manner as the company may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work:
- (6) All works under paragraph (5) above for the provision of new, altered or substituted sewers or the protection of any sewers of the company shall, where so required by the company, be constructed by the company or under the supervision (if given) of an officer of the company duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the company in the construction of such works, or in the preparation or examination of plans or designs therefor, or in such supervision, shall be paid to the company by the Board:
- (7) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the company, have been completed under this section to the reasonable satisfaction of the company, they shall be vested in and become maintainable by the company:
- (8)
  - (a) The Board shall be liable to make good, or, if the company so decide, to repay to the company any expense reasonably incurred by the company in making good, all injury or damage to any sewers, drains or works vested in the company (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken therefor and the provision of any new, altered or substituted sewer or any protective work under this section and shall pay to the company any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work;

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- (b) The Board shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair thereof or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Board, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work:

Provided that the company shall give to the Board reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Board;

- (c) Nothing in sub-paragraph (a) or (b) above shall impose any liability on the Board in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the Board, its contractors or agents:
- (9) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the Board, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this section:
  - (10) The approval by the company of any plans, drawings, sections or specifications or the supervision by it of any work under this section shall not (if it was done without negligence on the part of the company, its officers, servants, or, if not the Board, its contractors or agents) exonerate the Board from any liability or affect any claim for damages by the company:
  - (11) Notwithstanding the temporary stopping up or diversion of any highway under the powers of section 20 (Temporary stoppage of highways) 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 it 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:
  - (12) Where, in consequence of this Act, any part of any street, bridleway or footpath in which any sewer is situate ceases to be part of the street, bridleway or footpath, the company may exercise the same rights of access to such sewer as it enjoyed immediately before the passing of this Act, but nothing in this paragraph shall affect any right of the Board or of the company to require alteration of such sewer under this section:
  - (13) The Board shall, so far as is reasonably practicable, so exercise the powers conferred by section 21 (Underpinning of buildings near works) of this Act as not to obstruct or render less convenient the access to any sewer:
  - (14) As soon as reasonably practicable after the completion of the construction of the specified works the Board shall deliver to the company a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this section:
  - (15) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the company in respect of any sewer or other apparatus constructed, laid or erected in land belonging to the Board before the passing of this Act:

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- (16) Any difference arising between the Board and the company under this section shall be referred to and settled by arbitration.

#### **41 For protection of telecommunications operators**

For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Board and the telecommunications operators concerned, have effect:—

- (1) In this section expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act:
- (2) The temporary stopping up or diversion of any highway under section 20 (Temporary stoppage of highways) of this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that highway.

#### **42 For protection of National Rivers Authority**

For the protection of the National Rivers Authority (in this section referred to as “the authority”) the following provisions shall, unless otherwise agreed in writing between the Board and the authority, have effect:—

- (1) In this section—

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

“drainage work” means any watercourse and includes any land regularly used for providing flood storage capacity for any such watercourse and any other structure or appliance under the control of the authority constructed or used for defence against water;

“the fishery” means fish in, or migrating to or from, the river Eye or the river Trent and the spawn, spawning grounds or food of such fish in either of those rivers;

“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 in, on, under or over a watercourse or is likely to—

- (a) interfere with or affect (either directly or indirectly) any drainage work; or
- (b) cause obstruction to the free passage of water or fish in any watercourse; and

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

- (2) (a) Not less than 56 days before beginning to construct any specified work, the Board shall submit to the authority plans of the work and the work shall not be constructed except in accordance with plans approved by the authority, or settled by arbitration, and in accordance with any reasonable requirements made by the authority for the protection of any drainage work or the fishery or for the prevention of flooding or pollution;

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- (b) The requirements which the authority may make under sub-paragraph (a) above include conditions requiring the construction of such protective works by, and at the expense of, the Board during the construction of the specified work as are reasonably necessary to safeguard a drainage work against damage or to secure that the efficiency of a drainage work for flood defence purposes is not impaired:
- (3) If within a period of 56 days after the submission of any plans under sub-paragraph (2) (a) above the authority do not inform the Board in writing that they disapprove of those plans, stating the grounds of their disapproval, they shall be treated for the purposes of this section as having approved them:
- (4) Any specified work, and all protective works required by the authority under paragraph (2) above, shall be constructed to the reasonable satisfaction of the authority and the authority shall be entitled by their officer to watch and inspect the construction of such works:
- (5) If by reason of the construction of any specified work the efficiency of any flood defence work for drainage purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Board to the reasonable satisfaction of the authority and, if the Board fail to do so, the authority may make good the same and recover from the Board the expense reasonably incurred by them in so doing:
- (6) (a) The Board shall indemnify the authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the 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 any of the works or adjoining 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 any specified work or any act or omission of the Board, their contractors, agents, workmen or servants whilst engaged upon the work;
  - (b) The authority shall give to the Board reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Board:
- (7) 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 authority, or to their satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Board from any liability under the provisions of this section:
- (8) For the purposes of section 109 of the Water Resources Act 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 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:
- (9) Any difference arising between the Board and the authority under this section (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration.



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#### **43 For protection of Berkshire County Council**

For the protection of the Berkshire County Council (in this section referred to as “the council”) the following provisions shall, unless otherwise agreed in writing between the Board and the council, have effect:—

(1) In this section—

“highway” means any highway vested in or repairable or maintainable by the council;

“new highway” means any new or widened highway to be provided by the Board under the provisions of this Act and the expression “new highways” shall be construed accordingly;

“plans” includes sections and particulars; and

“specified works” means Works Nos. 2A, 2B and 2C, the new highways and so much of the works as may in any way affect any highway in the county of Berkshire:

(2) The Board shall not exercise the powers of section 20 (Temporary stoppage of highways) of this Act with respect to any highway unless they have given to the council not less than 21 days' notice in writing of their intention so to do, except in case of emergency when such notice as is practicable shall be given:

(3) Before commencing the construction of any of the specified works, the Board shall submit to the council for their approval, which shall not be unreasonably withheld, plans thereof and, notwithstanding anything shown on the deposited plans and the deposited sections, the work to which such plans relate shall not be constructed otherwise than in accordance with such plans as may be approved by the council as aforesaid, or, if such approval be refused, as may be settled by arbitration, and any part of the construction of the specified works which may involve interference with a highway shall be carried out under the supervision (if given) and to the reasonable satisfaction of the council:

Provided that, if within 56 days after the submission to them of plans in accordance with the provisions of this paragraph the council do not signify their approval or disapproval thereof and the grounds for such disapproval, they shall be deemed to have approved thereof:

(4) Notwithstanding anything in this Act or shown on the deposited plans Work No. 2A shall be designed, constructed and maintained so as to provide for loadings to be agreed in advance by the council (provided that nothing in this paragraph shall enable the council to require loadings to be provided in excess of those for which the existing Wexham Road Bridge is capable of bearing when properly maintained) and the Board shall indemnify the council against and make good to the council all expenses which the council may reasonably incur or be put to in the maintenance or repair of any highway, drain or apparatus therein by reason of any non-compliance by the Board with the provisions of this paragraph:

(5) (a) Before commencing to construct any part of the specified works which will involve interference with a highway the Board shall consult the council as to the time when such part shall be commenced, as to the extent of the surface of the highway which it may be reasonably necessary for the Board to occupy in the construction of such part and as to the conditions under which such part shall be constructed so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public, and such part shall not

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be constructed and the surface of the highway shall not be occupied by the Board except at the time, to the extent and in accordance with such reasonable conditions as may be agreed between the Board and the council or, in default of agreement, settled by arbitration;

- (b) Any such highway shall be reinstated by the Board in a manner approved by the council and to their reasonable satisfaction but approval by the council shall not be unreasonably withheld;
- (6) The Board shall, at all reasonable times during the construction of any part of the specified works, afford to the surveyor of the council or his duly authorised representatives access to that part of the specified works for the purposes of inspection;
- (7) The structure of Works Nos. 2A, 2B and 2C, the embankments on which the approaches to those works are constructed and any fencing on either side of those approaches shall be maintained by the Board;
- (8) (a) The surface of the carriageway and footways of Work No. 2A shall be vested in and maintained by the council which shall have all such rights in relation to the subsoil and undersurface thereof as are necessary for the performance of their functions as highway authority:

Provided that the Board shall be liable to the council for the maintenance of any new highway and the surface of the new bridge for a period of 12 months after the date of completion;

- (b) In this paragraph “date of completion” means the date upon which the new highway or, as the case may be, Work No. 2A is completed in accordance with the requirements of this section and open for public use or, in the case of a difference between the Board and the council as to whether the said requirements have been complied with, until the matter in dispute has been referred to and settled by arbitration and the arbitrator has certified that the new highway or, as the case may be, Work No. 2A has been completed in accordance with his decision;
  - (9) The Board shall keep the council indemnified against all actions, costs, claims and demands whatsoever brought or made against the council by any person in respect of loss or damage caused by, or in consequence of, the construction of any of the specified works and the fact that any act or thing may have been done in accordance with plans approved by the council or in accordance with any requirement of the council or under their supervision shall not (if it was done without negligence on the part of the council) excuse the Board from liability under the provisions of this section:
- Provided that the council shall give to the Board reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Board:
- (10) The Board shall repay to the council all costs, charges and expenses reasonably incurred by the council in the examination of the plans submitted to the council under this section in relation to any of the specified works;
  - (11) Any difference arising between the Board and the council under this section shall be referred to and settled by arbitration.

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#### **44 For protection of National Carriers Limited**

For the protection of National Carriers Limited (which expression shall include successors in title) (in this section referred to as “the company”) the following provisions shall have effect:—

- (1) In this section “the Slough land” means the land numbered on the deposited plans 2 in the borough of Slough:
- (2) Notwithstanding anything in sections 26 (Purchase of land) and 32 (Extinction or suspension of private rights of way) of this Act, the Board shall not purchase compulsorily, nor shall there be extinguished, varied or suspended, the right of way enjoyed by or vested in the company over the Slough land by virtue of an Agreement dated 5th May 1972 and made between the Board (1), the company (2) and National Freight Corporation (3).

#### **45 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 Board to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any river)—
  - (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) A 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 VI**

#### **GENERAL**

#### **46 Relinquishment, etc., of works**

- (1) In this section—

“the road” means so much of Old Seacoal Lane as is referred to in subsection (1)(b)(iii) of section 9 (Roadworks at Holborn Viaduct) of the British Railways (London) Act 1988;

“point K” means the point K referred to in that subsection; and

“the relinquished works” means the new roads authorised to be made and maintained under subsection (1)(b) and (f) of the said section 9.
- (2) The Board shall relinquish the power to make and maintain the relinquished works.
- (3) Notwithstanding anything in subsection (1) of the said section 9, the Board shall, on exercising the power to stop up and discontinue the road, stop up only so much of the road as lies between point K and a point in the road 18·72 metres east of its

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junction with Farringdon Street, measured along the centre of the road from a line corresponding with the back edge of the eastern footway of that street at that junction.

- (4) So much of section 9(1) of the said Act of 1988 as relates to the relinquished works shall cease to have effect.

#### **47 Planning permission**

- (1) In this section “Part 11 development” means development permitted by article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permits 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.

#### **48 Repeals**

The enactments specified in columns (1) and (2) of Schedule 4 to this Act are hereby repealed to the extent mentioned in column (3) of that Schedule.

#### **49 Arbitration**

Where under any provision of this Act any difference (other than a difference which falls to be determined by the tribunal) is to be referred to or settled 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