



# Greater Nottingham Light Rapid Transit Act 1994

## 1994 CHAPTER xv

### PART IV

#### PROTECTIVE PROVISIONS

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

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

(1) In this section—

“construction” includes placing, alteration and renewal;

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

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

“railway property” means any railway of the railways board and any works connected therewith for the maintenance or operation of which the railways board are responsible and includes any land held or used by the railways board for the purposes of such railway or works, not being railway property acquired by the undertakers;

“specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, any railway property:

- (2) (a) The undertakers shall not under the powers of this Act acquire any land or other property of the railways board, or any right in such land or other property, without the consent of the railways board, which consent shall not be unreasonably withheld;
- (b) Where any specified works are situated in land in respect of which easements or rights only in railway property are acquired, the undertakers shall fence

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off those works from that railway property to the reasonable satisfaction of the engineer where so required by him and shall thereafter be responsible for keeping in good repair the fencing so provided:

- (3) In the exercise of the powers of section 18 (Temporary stoppage of highways) of this Act the undertakers shall at all times provide reasonable access, with or without vehicles, plant, machinery and materials, to any station or depot of the railways board or other railway property:
- (4) The undertakers shall, before commencing the construction of the specified works, supply to the railways board proper and sufficient plans thereof for the approval of the engineer and shall not commence the construction of those works until such plans have been approved in writing by the engineer or settled by arbitration:

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

- (5) If, within 56 days after such plans have been supplied to the railways board, the railways board give notice to the undertakers that the railways board desire themselves to construct any part of the specified works which, in the opinion of the engineer, will or may affect the stability of any operational railway or the safe operation of traffic on the railways of the railways board then, if the undertakers desire such part of the specified works to be constructed, the railways board shall construct the same with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the undertakers in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (6) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before commencement of the construction of the specified works to ensure the safety or stability of the railways of the railways board, and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the undertakers, if the railways board so desire, with all reasonable dispatch, and the undertakers shall not commence the construction of the specified works until the engineer shall have notified them that the protective works have been completed to his reasonable satisfaction:
- (7) (a) The undertakers shall give to the railways board notice in writing of their intention to commence the construction of any of the specified works in accordance with sub-paragraph (b) below and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property;
- (b) The period of notice required under sub-paragraph (a) above shall be—
- (i) 6 months in any case where the engineer, upon signifying his approval or disapproval of plans supplied to the railways board under paragraph (4) above, has reasonably given his opinion that the construction or maintenance of the specified works will require the undertakers to have temporary occupation of the permanent way of any operational railway (including land lying within a distance of 2 metres from any outer rail of the railway) or will necessitate

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- the imposition of speed restrictions, or the substitution, diversion or suspension of train services; and
- (ii) 28 days in all other cases:
- (8) (a) When construction of any specified works is commenced the work shall be carried out—
- (i) with all reasonable dispatch in accordance with plans approved or deemed to have been approved or settled as aforesaid;
  - (ii) under the supervision (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 user of any railway of the railways board or the traffic thereon and the use by passengers of railway property;
- (b) If any damage to railway property or any such interference or obstruction shall be caused or take place, the undertakers shall, notwithstanding any such approval as aforesaid, make good such damage and pay to the railways board all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any damage, interference or obstruction:
- (9) Nothing in paragraph (8) (b) above shall impose any liability on the undertakers for any damage, cost, expense or loss which is attributable to the neglect or default of the railways board or their servants or agents:
- (10) The undertakers shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction of those works:
- (11) The railways board shall—
- (a) at all times afford reasonable facilities to the undertakers and their agents for access to any works carried out by the railways board under this section during their construction; and
  - (b) supply the undertakers with such information as they may reasonably require with regard to such works or the method of construction of those works:
- (12) If any alterations or additions (either permanent or temporary) to any operational railway of the railways board shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after their completion, in consequence of the construction of the specified works, such alterations and additions may be made by the railways board and, if the railways board give to the undertakers reasonable notice of their intention to make such alterations or additions, the undertakers shall pay to the railways board the cost thereof as certified by the engineer, subject to the addition, in the case of permanent alterations and additions, of a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:

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

- (13) If the cost to the railways board of altering any existing railway within its boundaries or of maintaining or reconstructing any existing railway under any powers existing at the passing of this Act is increased by reason of the existence of the specified works any such additional expense which the railways board, after giving 56 days' notice to the undertakers, reasonably so incur shall be repayable by the undertakers to the railways board:
- (14) The undertakers shall repay to the railways board all costs, charges and expenses reasonably incurred by the railways board—
- (a) in constructing any part of the specified works on behalf of the undertakers as provided by paragraph (5) above, or in constructing any protective works under the provisions of paragraph (6) above, including, in respect of any permanent protective works, a capitalised sum representing the reasonable cost of maintaining and renewing those works;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling railways and for preventing interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of the specified works;
  - (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, be necessary by reason of the construction, maintenance, repair or failure of the specified works or from the substitution, suspension or diversion of services which may be necessary for that reason;
  - (d) in respect of any additional temporary lighting of railways in the vicinity of the specified works, being lighting made reasonably necessary by reason of the specified works or the failure thereof;
  - (e) in respect of the approval by the engineer of plans supplied by the undertakers under paragraph (4) above and the supervision by him of the construction of the specified works:
- (15) If at any time after the completion of the specified works, not being works vested in the railways board, the railways board give notice to the undertakers that the state of repair of the specified works appears to affect prejudicially any operational railway of the railways board, the undertakers shall, on receipt of such notice, take such steps as may be reasonably necessary to remedy any such defect:
- (16) All temporary structures, erections, works, apparatus and appliances erected or placed by the undertakers under the powers of this Act upon, over or under any operational railway of the railways board shall, as soon as reasonably practicable, be removed by the undertakers 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 the railway and as little interference with, or delay or interruption to, the traffic on the railways of the railways board as may be; and if any damage to railway property or such interference, delay or interruption shall be caused by any such failure to remove any such temporary structures, erections, works, apparatus or appliances, the undertakers shall make good such damage and pay to the railways board the reasonable costs and expenses to which

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they may be put, and reasonable compensation for any loss which they may sustain, by reason of such damage, interference, delay or interruption:

- (17) Before providing any illumination or illuminated traffic sign on or in connection with the specified works, or otherwise in the vicinity of any railway of the railways board, the undertakers shall consult with the railways board and comply with their reasonable requirements with a view to ensuring that such illumination or illuminated sign could not be confused with any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway:
- (18) (a) The undertakers shall be responsible for and make good to the railways board all costs, charges, damages and expenses not otherwise provided for in this section which may be occasioned to, or reasonably incurred by, the railways board—
- (i) by reason of the construction or repair of the specified works or the failure thereof; or
  - (ii) by reason of any act or omission of the undertakers or of any person in their employ or of their contractors or others whilst engaged upon the construction or repair of the specified works;
- and the undertakers shall indemnify the railways board from and against all claims and demands arising out of, or in connection with, the construction or repair of the specified works or any such failure, act or omission as aforesaid;
- (b) The fact that any act or thing may have been done by the railways board on behalf of the undertakers or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without neglect or default on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the undertakers from any liability under this paragraph;
- (c) The railways board shall give to the undertakers reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertakers:
- (19) Any difference arising between the undertakers and the railways board under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.