



# British Railways Act 1994

## 1994 CHAPTER iv

### PART I

#### PRELIMINARY

#### 1 Short title

This Act may be cited as the British Railways Act 1994.

#### 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 limits of deviation” means the limits of deviation shown on the deposited plans;
  - “reference point” means Ordnance Survey National Grid reference point;
  - “the tribunal” means the Lands Tribunal; and
  - “the works” means the works authorised by this Act.
- (2) 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.
- (3) Any reference in this Act to Work No. 2 shall be construed as a reference to the work of that number authorised by this Act.
- (4) References in this Act to access to any place shall include reference to egress from that place.

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- (5) References in this Act to the purchase by the Board of new rights are references to the purchase of rights to be created in favour of the Board.

### **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 13 to 19 thereof.
- (2) (a) For the purposes of the enactments incorporated by subsection (1) above the expression “the company” where used in those enactments means the Board.
- (b) 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 by the provisions of Part III of the New Roads and Street Works Act 1991 or by section 26 (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”.
- (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, on lands in their ownership, or to be made available to them, and in the line or situation 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 following work in Mid Glamorgan with all necessary works and conveniences connected therewith:—

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In the borough of Cynon Valley—  
(Deviation railway at Mountain Ash).

Work No. 2—A railway (704 metres in length), being a deviation of the Cardiff to Aberdare Railway on the eastern side of that railway, commencing by a junction with that railway at a point 58 metres south of Town Bridge over that railway and terminating by a junction with that railway at a point 78 metres south of the junction of Bailey Street with Miskin Road including a crossing on the level of the footpath (

### *General works provisions*

## **6 Power to deviate**

In the execution of Work No. 2 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.

## **7 Stopping up highways**

- (1) On the stopping up of any highway or part thereof under any provision of this Act, other than section 11 (Temporary stoppage of highways), all rights of way over or along the highway or part so stopped up shall be extinguished.
- (2) Any person who suffers loss by reason of the extinguishment under this section of any private right shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

## **8 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.

## **9 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.

## **10 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.

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- (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.

## **11 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)
  - (a) The Board shall not exercise the powers of this section without the consent of the highway authority.
  - (b) Any such consent may be given subject to such reasonable conditions as the highway authority may require but shall not be unreasonably withheld and any question whether such consent has been unreasonably withheld, or whether any such condition is reasonable, shall be referred to and settled by arbitration.

## **12 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 Work No. 2 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, within 10 days after the giving of such notice, gives 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 has 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:

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- (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.

### **13 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 is vested, but approval of those plans by that authority shall not be unreasonably withheld.
- (a) (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 is 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.

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### Miscellaneous

#### 14 Bridge at Hunslet East, Leeds

(1) In this section—

“the existing bridge” means the bridge of the Board (numbered 4) carrying Fewston Avenue in the city of Leeds across the railway between Osmondthorpe and Stourton;

“the footway” means the western footway of Fewston Avenue; and

“the relevant enactments” means section 9 of the North Eastern Railway Act 1893, section 12 of the North Eastern Railway Act 1894, sections 46 and 50 of the Act of 1845 as incorporated with those Acts and any other enactment relating to the existing bridge.

- (2) The Board may bar public access to any part of the existing bridge other than access for persons on foot using the footway.
- (3) The relevant enactments shall cease to have effect in so far as they impose any obligation on the Board to provide a bridge on the site of the existing bridge of a width greater than that required for the accommodation of the footway or to allow public access to any part of the existing bridge other than the footway.

#### 15 Wheal Bois level crossing, Redruth, Cornwall

(1) In this section—

“the specified enactments” means the Highway (Railway Crossings) Act 1839, section 9 of the Railway Regulation Act 1842, section 47 of the Act of 1845, sections 5, 6 and 7 of the Railways Clauses Act 1863 and any other provision to the same or similar effect incorporated with, or contained in, any enactment; and

“Wheal Bois crossing” means the level crossing in the community of Redruth in the district of Kerrier, county of Cornwall, known as Wheal Bois level crossing (reference point SW 7117:4378) whereby the road leading from the A3047 to Radnor Road is crossed by the railway between Redruth and Truro stations.

- (2) Subject to the provisions of this Act, the Board may stop up and discontinue so much of the road at Wheal Bois crossing as lies within the boundaries of their property.
- (3) Upon the stopping up of Wheal Bois crossing the specified enactments shall cease to apply to that crossing.
- (4) The stopping up under this section of Wheal Bois crossing shall not affect the right of persons to use that crossing on foot and the Board shall provide and maintain wicket gates or stiles on both sides of the railway at that crossing.
- (5) Section 28 of the Great Western Railway (General Powers) Act 1909 is hereby repealed so far as it relates to Wheal Bois crossing.

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## PART III

### LAND

*purchase of land, etc.*

#### 16 Purchase of land

- (1) The Board may purchase compulsorily and use for the purposes specified in column (3) of Part I of Schedule 1 to this Act, or for any purpose connected with or ancillary to their undertaking, all or any of the land specified in columns (1) and (2) of that Part.
- (2) For the avoidance of doubt, nothing in this section or section 17 (Purchase of rights over land) of this Act shall be taken as conferring a power to carry out works.

#### 17 Purchase of rights over land

- (1) The Board may 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 land to be used” and specified in columns (1) and (2) of Part II of Schedule 1 to this Act for the provision of means of access to the highways mentioned in column (3) of that Part, for the purposes specified in column (4) thereof.
- (2) 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 (1) 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 over which the new rights are, or are to be, exercisable, according to the requirements of the particular context.
- (3) Without prejudice to the generality of subsection (2) above, in relation to the purchase of new rights under subsection (1) above—
  - (a) Part I of the Act of 1965 shall have effect with the modifications specified in Schedule 2 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.

#### 18 Temporary use of land

The provisions set out in Part III of Schedule 1 to this Act shall have effect with respect to the temporary use of land by the Board for working sites.

*General lands provisions*

#### 19 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.

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- (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 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—



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- (a) the time for requiring the tribunal to state a case with respect thereto has not expired or 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.
- (d) (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.

## **20 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
- (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.

## **21 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 reason of the extinguishment or suspension under this section of any right shall be entitled to be paid by the Board compensation, to be determined in case of dispute by the tribunal.

## **22 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.

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- (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.

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

- (1) In this section “relevant land” means any land or new rights over land acquired by the Board for the purposes of the works.
- (2) In assessing the compensation payable to any person on the acquisition by the Board from him of any relevant land, the tribunal shall set off against the value of the relevant land any increase in value of any contiguous or adjacent lands belonging to the same person in the same capacity, or of the land over which new rights are acquired, 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.

### **24 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 1997.

## **PART IV**

### **PROTECTIVE PROVISIONS**

### **25 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 work no. 2, the board shall (except in case of emergency) give not less than 14 days' notice in writing to the chief officer of police.

### **26 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, except in paragraph (2) below, apparatus in respect of which the relations between the Board and the undertakers are regulated by the provisions of Part III of the New Roads and Street Works Act 1991) and includes any structure for the lodging therein of apparatus or for giving access to 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; and

“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 11 (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 12 (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 is 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 of any such damage or interruption: Provided that—

(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;

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- (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 13 (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:
- (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 has been constructed and is 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, they shall give to the undertakers written notice of that 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, and in that case (or if in consequence of the exercise of any of the powers of this Act the undertakers reasonably require to remove any apparatus) the Board shall afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Board and thereafter for the maintenance, repair, renewal and inspection of that 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 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 that last-mentioned land:

- (b) (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 has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred 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 take place in any land of the Board, that work, in lieu of being executed by the undertakers, shall be executed by

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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 those terms and conditions 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 appears 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 works that 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;
- (b) Those 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 those works:

Provided that—

- (i) if the undertakers within 14 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Board, reasonably require the removal of any

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- apparatus and give written notice to the Board of that requirement, the foregoing provisions of this section shall apply as if the removal of the apparatus had been required by the Board under paragraph (7) above;
- (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 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 the 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 that case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of those 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, by reason 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 (that 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 of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Board of the powers of this Act:
- (14) If the cost of maintaining, using, repairing or renewing any apparatus is reduced by reason of any of the works, including the provision of alternative apparatus under this section, a capitalised sum representing that 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:

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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 has at the expense of the Board 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.

## **27 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 11 (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.

## **28 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.

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## PART V

### GENERAL

#### 29 Planning permission

- (1) Subject to subsection (2) below, in their application to development authorised by this Act, article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permit development authorised by private Act designating specifically both the nature of the development thereby authorised and land on which it may be carried out) shall have effect as if the authority to develop given by this Act were limited to such development begun within 10 years after the passing of this Act.
- (2) Subsection (1) 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.

#### 30 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