Post Office (Subway) Act 1966

1966 CHAPTER 25

An Act to authorise the Postmaster General to construct a subway in the City of Birmingham.

[3rd August 1966]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power to construct subway.

1.—(1) The Postmaster General may in accordance with this Act construct and maintain a subway in the City of Birmingham together with such other works, apparatus, machinery and appliances as may in his opinion be necessary or convenient for the purposes of the subway.

(2) The subway shall commence at the north-west corner of the junction of Severn Street and Suffolk Street in the City of Birmingham, shall run north-east below Severn Street and shall terminate at New Street railway station in the junction of Severn Street and Hill Street, the length of the subway being approximately 190 yards.

(3) Subject to the limits of deviation described below, the subway shall be constructed in the line and according to the levels shown on the plan and section (in this Act referred to as "the deposited plan" and "the deposited section") deposited on 15th November 1965 in connection with a Bill which was the same as the Bill for this Act with the Clerk of the Council and in the Office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons; and the other works authorised by this section shall be within those limits of deviation.

(4) In constructing the subway, the Postmaster General may deviate—

(*a*) laterally from the centre line of work shown on the deposited plan to any extent within the limits of deviation so shown, and

(*b*) from the levels thereof shown on the deposited section upwards to the extent of one foot and downwards to such extent as may be found necessary or desirable.

1950 c. 39.

(5) Part II of the Public Utilities Street Works Act 1950 (which regulates the relations between an authority carrying out road alterations and undertakers whose apparatus is affected by the alterations) shall apply in relation to works authorised by this section—

(*a*) as if those works were executed for road purposes and were mentioned in section 21(1)(*a*) of that Act,

(*b*) as if the promoting authority mentioned in that Act were the Postmaster General, and

(*c*) with the omission of subsections (1) and (2) of section 23 (which in certain cases limit the rights exercisable by statutory undertakers against the promoting authority).

1845 c. 20.

(6) Schedule 1 to this Act (which applies provisions corresponding to sections 18, 19 and 21 of the Railways Clauses Consolidation Act 1845 to apparatus and works other than undertakers' apparatus) shall have effect for the purposes of this Act.

Power to take subsoil of streets and compensation for injurious affection.

2.—(1) The Postmaster General may enter upon, take, use and appropriate without payment of compensation so much of the subsoil and under-surface of Severn Street, and of the intersections of Severn Street with other streets, being land within the limits of deviation described in section 1(4) above, as may be necessary for the purposes of that section.

1965 c. 56.

1946 c. 49.

(2) The Postmaster General shall be liable to pay such compensation, if any, as would be payable under section 7 or section 10 of the Compulsory Purchase Act 1965 (injurious affection of land not acquired) if the acquisition of land under subsection (1) above were a compulsory purchase to which Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 applied, and accordingly any dispute arising in relation to the compensation shall be referred to and determined by the Lands Tribunal.

Underpinning of buildings.

3.—(1) If in the execution of the works authorised by section 1 of this Act it becomes necessary to do so, the Postmaster General may, and if required by the owner or lessee shall, underpin or otherwise strengthen any building within a hundred feet of the limits of deviation described in section 1(4)(*a*) of this Act.

(2) Except in case of emergency, the Postmaster General shall give to the owner, lessee or occupier of a building, or the owner or lessee of a building shall give to the Postmaster General, at least fourteen days' notice in writing of the intention or, as the case may be, requirement to underpin or otherwise strengthen that building under this section, and if within seven days of the giving of such notice the owner, lessee or occupier or, as the case may be, the Postmaster General gives a counternotice in writing that he disputes the necessity of the underpinning or strengthening, the question of necessity shall be settled by arbitration.

(3) The Postmaster General may at any time after the underpinning or strengthening of any building under the foregoing provisions of this section is completed and before the expiration of a period of five years from the completion of the works authorised by section 1 of this Act do such further underpinning or strengthening of the building as he may deem necessary or expedient or, if the owner, lessee or occupier of the building disputes the necessity or expediency, as may be settled by arbitration.

(4) Where any question of necessity or expediency is referred to arbitration under the foregoing provisions of this section and the arbitrator, after inspecting the building, decides that the underpinning or strengthening is necessary or, as the case may be, that the further underpinning or strengthening is necessary or expedient, the arbitrator may, and if so required by the owner, lessee or occupier shall, prescribe the manner in which the underpinning or strengthening is to be executed, and the Postmaster General shall underpin or strengthen the building accordingly.

(5) The Postmaster General shall pay to the owner, lessee and occupier of every building underpinned or strengthened in pursuance of the powers conferred by this section compensation for any loss or damage which may result to them by reason of the exercise of those powers:

Provided that any claim for compensation under this subsection shall be made within three months from the time when the claimant first discovered the loss or damage, or the time when he ought reasonably to have discovered it, whichever is the earlier.

(6) If, before the expiration of the period of five years referred to in subsection (3) of this section, a building which has been underpinned or strengthened by the Postmaster General under this section, otherwise than in pursuance of a requirement by the owner or lessee thereof, suffers injury arising from the carrying out of the works authorised by this Act, then, except where the underpinning or strengthening was duly executed in the manner

prescribed by an arbitrator under subsection (4) of this section, the Postmaster General shall pay to the owner, lessee and occupier of the building compensation for that injury:

Provided that any claim for compensation under this subsection shall be made—

(*a*) in the case of compensation to the owner within twelve months, and

(*b*) in the case of compensation to a lessee or occupier, within six months,

from the time when the claimant first discovered the injury or the time when he ought reasonably to have discovered it, whichever is the earlier.

(7) For the purpose of determining how to exercise his powers and duties under this section the Postmaster General may at any reasonable time enter and survey any building within a hundred feet of the limits of deviation described in section 1(4)(*a*) of this Act.

(8) Any dispute arising in relation to compensation under this section shall be referred to and determined by the Lands Tribunal, and nothing in this section shall prejudice the payment of compensation under section 2 of this Act, but such adjustment shall be made of any compensation payable under this section or the said section 2 as may be required to ensure that compensation is not paid more than once in respect of the same injurious affection, loss, damage or injury.

(9) Any matter which under this section is to be determined by arbitration shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

1946 c. 49.

(10) Paragraph 19 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 shall apply to the service of notices under this section with any necessary modifications and, in particular, with the substitution of the Postmaster General for the Minister mentioned in the said paragraph 19(4).

(11) In this section " building " includes any structure.

Power to pump water and use sewers for removing water.

4.—(1) Subject to this section the Postmaster General may pump any water found by him in the construction and maintenance of the works authorised by section 1 of this Act and may use for the discharge of any water pumped or found by him in the construction and maintenance of those works any sewer or drain owned or controlled by the Council.

(2) The Postmaster General may for the purpose of using the powers under subsection (1) above lay down, take up and alter drains, pipes and other works (not being drains, pipes and other works of the Council) within the limits of deviation described in section 1(4)(*a*) of this Act and may for that purpose make any convenient connections with any sewer or drain owned or controlled by the Council within those limits.

(3) The Postmaster General shall not make any opening in, or discharge water directly into, any such sewer or drain except—

(*a*) with the consent of the Council (which shall not be unreasonably withheld),

(*b*) in accordance with plans reasonably approved by and, if so required, under the superintendence of the Council, and

(*c*) subject to such terms and conditions, including conditions as to the taking of any reasonably practicable steps to remove from the water discharged any gravel, soil or other solid substance or matter in suspension, as the Council may reasonably impose.

(4) Any difference arising between the Postmaster General and the Council under this section shall be settled by arbitration, to be referred to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

Protection of Council.

5. Schedule 2 to this Act shall have effect for the protection of the Council save as may be otherwise agreed in writing between the Postmaster General and the Council.

Correction of errors in deposited plan, section or book of reference.

6.—(1) If the deposited plan or section or the deposited book of reference is inaccurate in any respect the Postmaster General, after giving not less than ten days' notice to the owner, lessee and occupier of any land affected, may apply to two justices having jurisdiction in the City of Birmingham for its correction.

(2) If on the application it appears to the justices that the inaccuracy arose from mistake, the justices shall certify the fact accordingly and record the necessary correction in the certificate.

(3) The certificate shall be deposited in the Office of the Clerk of the Parliaments, and copies shall be deposited in the Private Bill Office, House of Commons, and with the Clerk of the Council; and thereupon the deposited plan, section or book of reference shall be deemed to be corrected according to 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.

Short title and interpretation.

7.—(1) This Act may be cited as the Post Office (Subway) Act 1966.

(2) In this Act—

" the Council " means the city council of Birmingham;

" deposited book of reference " means a book deposited on 15th November 1965 in connection with a Bill which was the same as the Bill for this Act with the Clerk of the Council and in the Office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of land which may be used under this Act;

" deposited plan " and " deposited section " have the meanings given by section 1(3) of this Act.

SCHEDULES

SCHEDULE 1

Section 1.

INTERFERENCE WITH APPARATUS, ETC.

1.—(1) In connection with the construction or maintenance of the works authorised by section 1 of this Act the Postmaster General may within the limits of deviation mentioned in section 1(4)(*a*) of this Act—

(*a*) raise, sink or otherwise alter the position of any watercourse, drain, sewer, electric, gas, water or other pipes, lines or wires and of any other works or apparatus, and

(*b*) remove all other obstructions to the execution of those works.

(2) The Postmaster General shall act under this paragraph with as little detriment and inconvenience to other persons as the circumstances admit.

(3) The Postmaster General shall not act under this paragraph so as to impede any supply, services or facilities until good and sufficient apparatus, and all other works necessary or proper for continuing or replacing the supply, services or facilities, have been provided, carried out, and made ready for use, with as little alteration as is practicable.

2.—(1) The Postmaster General shall, so far as practicable, make good all damage done to any property in the exercise of powers conferred by this Schedule and shall make compensation to all persons for any loss or damage or injury sustained by them in consequence of the exercise of his powers under this Schedule.

(2) Any dispute arising in relation to compensation under this paragraph shall be referred to and determined by the Lands Tribunal; and nothing in this paragraph shall prejudice the payment of compensation under section 2 of this Act, but such adjustment shall be made of any compensation payable under this Schedule or the said section 2 as may be required to ensure that compensation is not paid more than once in respect of the same injurious affection, loss, damage or injury.

3. This Schedule shall not apply so as to regulate relations between the Postmaster General and any other person if those relations are regulated by Part II of the Public Utilities Street Works Act 1950 as applied by section 1 of this Act. 1950 c. 39.

SCHEDULE 2

Section 5.

PROVISIONS FOR PROTECTION OF COUNCIL

1. The Postmaster General shall be liable to make good to the Council all injury or damage to or subsidence of any highway vested in the Council caused by or resulting from any of the works authorised by section 1 of this Act, and shall from time to time pay to the Council any amount due by virtue of this paragraph.

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2. The Postmaster General shall effectively indemnify and hold harmless the Council from and against all claims and demands arising out of any defect in any sewer, main or apparatus of the Council situate in or under any highway within the limits of deviation described in section 1(4)(*a*) of this Act which may occur as a result of the construction or maintenance of the works authorised by section 1 of this Act:

Provided that—

(i) this indemnity shall not extend to any claim or demand arising out of any such defect as aforesaid which would not have occurred but for some act, neglect or default of the Council or of any servant, agent or contractor of the Council;

(ii) the Council shall give to the Postmaster General reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Postmaster General.

3. Any difference arising between the Postmaster General and the Council under paragraph 1 of this Schedule shall be settled by arbitration, to be referred to a single arbitrator appointed by agreement between the parties concerned, or, in default of agreement, by the President of the Institution of Civil Engineers.