



Cattewater Reclamation Act 1992

1992 CHAPTER xiv

PART IV

GENERAL

24 Crown rights

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall and, in particular and without prejudice to the generality of the foregoing, nothing in this Act authorises the Company to take, use, enter upon or in any manner interfere with any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—
- (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 the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, as the case may be, the consent in writing of two or more of such of the regular officers of the said Duchy or of such other persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863; or
 - (c) 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 this subsection may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

25 Power to sell or lease works or to transfer related powers

The Company may at any time sell or lease (subject to such terms and conditions as may be agreed) any part of the works authorised by this Act or transfer or delegate

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any power conferred upon them for the purposes of those works and in that event the purchaser, lessee or transferee, as the case may be, shall have and may exercise to the extent authorised by his conveyance, lease or instrument of transfer, all or any of the powers conferred upon the Company by or under this Act in relation to that part of the works authorised by this Act but shall be subject to all the restrictions, liabilities and obligations in respect thereof to which the Company are subject and shall perform all the functions of the Company conferred by or under this Act in respect of that part.

26 Saving for town and country planning

Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1988 (or any general order superseding that order made under section 59 of the Town and Country Planning Act 1990, or any corresponding provision of an Act coming into force on the repeal of that section), to be—

- (a) development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out; or
- (b) development by dock, pier or harbour undertakers or their lessees of operational land of the undertaking, being development which is required for the purpose of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers or goods at a dock, pier or harbour.

27 Saving for Coast Protection Act 1949

Nothing in this Act shall affect the operation of section 18 of the Coast Protection Act 1949 (which concerns the removal of materials from the seashore) and sections 34 to 36 of that Act (which require the consent of the Secretary of State to certain operations and contain other provisions for the safety of navigation).

28 Defence of due diligence

- (1) In proceedings for an offence under any provision of this Act mentioned in subsection (2) below it shall be a defence for the Company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The provisions referred to in subsection (1) above are the following:—
 - section 18 (Lights on tidal works during construction);
 - section 19 (Provision against danger to navigation);
 - section 22 (Permanent lights on tidal works).
- (3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information as was then in their possession, identifying, or assisting in the identification of, that other person.

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29 For protection of Commissioners

For the protection of the Commissioners the following provisions shall, unless otherwise agreed in writing between the Company and the Commissioners, apply:—

- (1) In this section—
 - “construction” includes reconstruction and the maintenance and repair of the specified works;
 - “the harbour master” means the harbour master of the Commissioners;
 - “plans” includes sections, drawings and particulars;
 - “specified operations” and “specified works” mean respectively—
 - (a) any operations authorised by this Act (other than the construction of any specified works); and
 - (b) any of the works:
- (2)
 - (a) The Company shall, before commencing the carrying out of any specified operations or the construction of any specified works, furnish to the Commissioners proper and sufficient plans thereof for the reasonable approval of the harbour master and shall not commence the specified operations or the specified works until plans thereof have been approved in writing by the harbour master;
 - (b) Approval of any plans under this section may be given subject to reasonable conditions but if within 28 days after such plans have been furnished to the Commissioners the harbour master shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:
- (3)
 - (a) If there shall be any inconsistency between any plans approved by the Commissioners under this section and the plans and sections approved by the Secretary of State under section 17 (Tidal works not to be executed without approval of Secretary of State) of this Act, the specified operations shall be carried out or the specified works shall be constructed in accordance with the plans and sections approved by the Secretary of State;
 - (b) Upon submitting any plans and sections to the Secretary of State under the said section 17, the Company shall send a copy thereof to the Commissioners:
- (4)
 - (a) The Company shall wherever reasonably practicable give to the harbour master 14 days' notice of their intention to commence the carrying out of any specified operations or the construction of any specified works;
 - (b) In the case of maintenance or repair of any specified works carried out in an emergency they shall give such notice as may be practicable in the circumstances:
- (5) The specified operations and the specified works shall, when commenced, be carried out—
 - (a) with all reasonable dispatch in accordance with the approved plans and to the reasonable satisfaction of the harbour master;
 - (b) in such manner as to ensure that the navigation of the Cattewater is not interfered with more than is reasonably necessary; and
 - (c) without precluding the maintenance at all times of an unobstructed main navigable channel for the safe passage of vessels:

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- (6) The Company shall at all times afford reasonable facilities to the harbour master for access to the site of the specified operations and the specified works during their carrying out or construction and shall with all reasonable dispatch supply him with all such information as he may reasonably require with regard to the specified operations or the specified works or the method of carrying out or construction thereof:
- (7) If during or after the construction of tidal works under this Act there is caused or created any accumulation of silt or other material or any scouring or alteration of the tidal flow in the Cattewater, in consequence of the exercise by the Company or their agents of their powers under this Act, which so adversely affects the navigational channels of the Cattewater as materially to increase the cost to the Commissioners of maintaining those channels in a navigable condition, the Company, if so requested by the Commissioners, shall at their discretion either carry out at their own expense such work as may be reasonably required by the Commissioners or reimburse the Commissioners the amount of the increase in the costs reasonably incurred by the Commissioners from time to time in so maintaining those channels:
- (8) Any difference arising between the Company and the Commissioners under this section shall be determined by arbitration.

30 For protection of Cattedown Wharves Limited

- (1) Unless otherwise agreed in writing between the Company and Cattedown Wharves Limited, the provisions of section 29 (For protection of Commissioners) of this Act shall extend for the protection of Cattedown Wharves Limited and for that purpose shall have effect as if—
 - (a) any reference therein to the Commissioners included a reference to Cattedown Wharves Limited;
 - (b) the reference to the harbour master was a reference to the engineer appointed by Cattedown Wharves Limited; and
 - (c) the reference to the Cattewater in paragraph (7) included the pocket berths operated by Cattedown Wharves Limited.
- (2) If there shall be any inconsistency between any plans approved by the Commissioners under the said section 29 and the plans approved by Cattedown Wharves Limited, the specified operations shall be carried out or the specified works shall be constructed, subject to paragraph (3)(a) of that section, in accordance with the plans approved by the Commissioners.

31 For protection of British Railways Board

For the protection of the British Railways Board (in this section referred to as “the railways board”) the following provisions shall unless otherwise agreed in writing between the Company and the railways board apply:—

- (1) In this section—
 - “construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;
 - “the engineer” means an engineer to be appointed by the railways board;
 - “plans” includes sections, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction);

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“the railway” means the Cattewater Branch Railway of the railways board;

“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;

“specified works” means so much of the works authorised by this Act (whether temporary or permanent) as may be situated upon, across, under or over or within 15 metres of, or may in any way affect railway property and includes the construction, maintenance and renewal of such works:

- (2) The Company shall before commencing the specified works (other than works of maintenance or repair) furnish to the railways board proper and sufficient plans thereof for the reasonable approval of the engineer and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that if within 56 days after such plans have been furnished to the railways board the engineer has not intimated his disapproval thereof and the grounds of his disapproval he shall be deemed to have approved the same:

- (3) If within 56 days after such plans have been furnished to the railways board, the railways board give notice to the Company 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 railway property then, if the Company 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 Company in accordance with the plans approved or deemed to be approved or settled as aforesaid:
- (4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of railway property and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board or by the Company, if the railways board so desire, with all reasonable dispatch and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed to his reasonable satisfaction:
- (5) The Company shall give to the railways board 28 days' notice in writing of their intention to commence the construction of any of the specified works and, except in emergency (when they shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of the specified works:
- (6) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
 - (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage to the railway property as may be; and
 - (d) 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;

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and, if any damage to railway property or any such interference or obstruction is caused or takes place, the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand 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 such damage, interference or obstruction:

- (7) The Company shall—
- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction;
 - (b) ensure access for the engineer at all reasonable times to all working sites, depots and premises at which materials to be employed in the construction of the specified works are being made, constructed or assembled;
 - (c) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (8) The railways board shall at all times afford reasonable facilities to the Company and their agents for access to any works carried out by the railways board under this section during their construction and shall supply the Company with such information as they may reasonably require with regard to such works or the method of construction thereof:
- (9) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of the specified works, such alterations and additions may be effected by the railways board after not less than 28 days' notice has been given to the Company and the Company shall pay to the railways board on demand the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increased or additional cost of maintaining, working and, when necessary, renewing any such alterations or additions:
- (10) The Company 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 Company as provided by paragraph (3) above or in constructing any protective works under the provisions of paragraph (4) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property and for preventing as far as may be all 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 are necessary as a result of the construction, maintenance, repair or failure of the specified works and which may in the opinion of the engineer be required to be imposed or from the substitution, suspension or diversion of services which may be necessary for the same reason;
 - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works being lighting made reasonably necessary as a result of the specified works or the failure thereof;
 - (e) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the specified works:

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- (11) 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 Company informing them that the state of repair of the specified works appears to be such as prejudicially to affect railway property, the Company shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of repair as not prejudicially to affect railway property and, if and whenever the Company fail to do so, the railways board may make and do in and upon the land of the railways board or the Company all such works and things as are requisite to put the specified works in such state of repair as aforesaid and the costs and expenses reasonably incurred by the railways board in so doing shall be repaid to them by the Company:
- (12) Any additional expense which the railways board may reasonably incur after giving 28 days' notice to the Company in widening, altering, reconstructing or maintaining railway property under any powers existing at the passing of this Act by reason of the existence of the specified works shall be repaid by the Company to the railways board:
- (13) The Company 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—
- (a) by reason of the specified works or failure thereof; or
 - (b) by reason of any act or omission of the Company or of any persons in their employ or of their contractors or others whilst engaged upon the specified works;

and the Company shall effectively indemnify and hold harmless the railways board from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the railways board on behalf of the Company 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 negligence on the part of the railways board or of any person in their employ or of their contractors or agents) excuse the Company from any liability under the provisions of this section:

Provided that the railways board shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company:

- (14) Any difference arising between the Company and the railways board under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

32 For protection of South West Water Services Limited

For the protection of South West Water Services Limited (in this section referred to as “the water company”) the following provisions shall, unless otherwise agreed in writing between the Company and the water company, apply:—

- (1) In this section—
- “construction” includes execution and placing, extension, enlargement, alteration, replacement or re-laying and “construct” and “constructed” have corresponding meanings;
 - “outfall” and “sewer” mean respectively any outfall and any sewer vested in the water company or under their management and control;

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“plans” includes descriptions, drawings and particulars;

“specified work” means so much of—

- (a) “the works” as defined by section 2 (Interpretation) of this Act;
- (b) the reclamation authorised by subsection (3) of section 13 (Power to construct work) of this Act;

as will or may be situated within 15 metres measured in any direction of any outfall or sewer or which may otherwise affect any outfall or sewer:

- (2) (a) Before commencing the construction of the specified works the Company at their own expense shall secure the removal, relocation, alteration or improvement of any outfall or sewer to the satisfaction of the water company and subject to the consent of the National Rivers Authority, if and to the extent that the outfall or sewer may be adversely affected by the construction of the works;
- (b) Any works carried out by the Company under sub-paragraph (a) above shall be carried out to the reasonable satisfaction of the water company in accordance with plans approved by them under paragraph (3) below;
- (c) The Company and the water company may agree that any such works shall be carried out by the water company at the expense of the Company;
- (3) (a) Before commencing the construction of any specified work the Company shall submit plans thereof to the water company for their reasonable approval and shall not commence the same until such plans have been approved by the water company:

Provided that if the water company do not within 42 days after the receipt of any such plans (or such shorter period as may be agreed by the water company having regard to prior consultation as to the plans) signify to the Company their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved thereof;

- (b) In the case of any specified work carried out in an emergency the Company shall not be required to submit plans thereof before commencing the same but they shall give to the water company such notice and such particulars thereof as may be practicable in the circumstances before the work is commenced, with further particulars and plans as soon as reasonably practicable thereafter:
- (4) Upon signifying their approval of the plans of any specified work, or considering notice of any specified work carried out in an emergency, the water company may specify any steps which shall be taken by the Company in the carrying out of the work, being steps reasonably required for the protection of any outfall or sewer and for ensuring access by the water company thereto, having regard to any removal, relocation, alteration or improvement carried out under paragraph (2) above:
- (5) (a) Subject to the provisions of this section a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved under paragraph (3) above or settled by arbitration and in accordance with any requirement made by the water company under paragraph (4) above or settled by arbitration, and shall be constructed in accordance with those plans and any such requirements to the reasonable satisfaction of the water company who shall be given reasonable notice of the date and time on and at which the specified work is to be commenced;

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- (b) The Company shall at all reasonable times afford to the water company and their duly authorised representatives access to such specified work for the purpose of inspection:
- (6) If as a consequence of the carrying out by the Company of any specified work any outfall or sewer is damaged or its efficiency for sewerage purposes is impaired, and the water company take such steps as are reasonable—
- (a) to make good the outfall or sewer to restore it to its former standard of efficiency; or in the event of that not being practicable;
- (b) where necessary, to construct some other work in substitution therefor;
- they may recover from the Company the reasonable cost of so doing and any such cost of executing works needed for remedying any subsidence of the substituted work during such reasonable period as may be agreed between the Company and the water company:
- (7) If the water company have reasonable ground for believing that any outfall or sewer is likely to be damaged or the efficiency thereof for sewerage purposes is likely to be impaired in any of the circumstances mentioned in paragraph (6) above, they may carry out such protective works as may be agreed between them and the Company or as, failing agreement, may be settled by arbitration, and recover the reasonable cost thereof from the Company:
- (8) If in consequence of the construction of the specified works, the operation of any outfall or sewer is impaired or adversely affected by reason of siltation or scouring, the Company shall carry out such dredging or other works as may be required to secure the effective discharge of effluent:
- Provided that if the Company fail to do so within such time as may be reasonably required for the purpose after notice in writing from the water company the water company may carry out any necessary work and recover from the Company all costs reasonably incurred by them in so doing:
- (9) If as a consequence of the carrying out by the Company of any specified works, the water company reasonably incur additional expenditure in respect of the maintenance or operation of any sewer or outfall affected by the specified works, they may recover such expenditure from the Company upon reasonable notice:
- (10) 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 water company or to their satisfaction or in accordance with any directions or award of an arbitrator, shall not relieve the Company from any liability under the provisions of this section:
- (11) Costs recoverable by the water company from the Company under this section include a reasonable proportion of the overhead charges of the water company:
- (12) Any difference arising between the Company and the water company under this section (other than a difference as to the construction of this section) shall be determined by arbitration.

33 For protection of Devon County Council

Nothing in this Act shall affect or prejudice the powers and duties of Devon County Council in its capacity as waste regulation authority under the provisions of Part II of the Environmental Protection Act 1990 and any regulations made thereunder.

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34 Arbitration

Where under this Act any question is to be determined by arbitration, then, unless otherwise provided, the question 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