



# Folkestone Harbour Act 1992

## 1992 CHAPTER vi

An Act to empower Folkestone Properties Limited to reclaim land and construct works at Folkestone Harbour; to make provision with respect to dredging and moorings; and for connected or other purposes. [16th March 1992]

WHEREAS—

- (1) The statutory harbour undertaking at Folkestone was transferred from Sealink U.K. Limited to Sealink Harbours Limited in 1982 pursuant to a scheme made under section 2 of the Transport Act 1981:
- (2) By virtue of the Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991 that undertaking was transferred from Sealink Harbours Limited to Folkestone Properties Limited (“the Company”), a company incorporated under the Companies Act 1985:
- (3) It would be of public and local advantage to regenerate parts of Folkestone Harbour by the creation of a waterside development comprising housing, shops and leisure facilities, together with facilities for the mooring of vessels:
- (4) It is expedient that the Company be empowered to reclaim land for these purposes and to carry out certain other works of improvement:
- (5) It is expedient that the other provisions of this Act be enacted:
- (6) The objects of this Act cannot be attained without the authority of Parliament:
- (7) A plan and sections showing the lines, situations and levels of the works by this Act authorised and the lands which may be used for the purposes thereof have been deposited in the office of the Clerk of the Parliaments, in the Private Bill Office of the House of Commons and with the Chief Executive of Kent County Council, and such plan and sections are respectively referred to in this Act as the deposited plan and the deposited sections:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

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and Commons, in this present Parliament assembled, and by the authority of the same as follows, that is to say:—

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Folkestone Harbour Act 1992.

#### 2 Interpretation

(1) In this Act, except where the context otherwise requires—

“the Company” means Folkestone Properties Limited;

“enactment” means any Act (including this Act) and any subordinate legislation within the meaning of the Interpretation Act 1978;

“existing” means existing at the passing of this Act;

“the harbour” means those parts of Folkestone Harbour known as the Inner Harbour and the Outer Harbour;

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

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

“moorings” includes piled moorings, floating jetties, pontoons, buoys and like apparatus and facilities;

“tidal work” means so much of any works as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the undertaking of the Company at Folkestone Harbour as transferred to the Company by virtue of the Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991 and as from time to time authorised by any enactment;

“works” means the works authorised by section 3 (Power to construct works) of this Act and any works constructed under section 4 (Power to make subsidiary works) of this Act for or in connection with or subsidiary to those works and includes those works as altered, replaced or re-laid under subsection (2) of the said section 3.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Act shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) Reference points specified in this Act shall be construed as references to Ordnance Survey National Grid reference points.

(4) Any reference in this Act to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act.

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## PART II

### WORKS

#### 3 Power to construct works

- (1) Subject to the provisions of this Act, the Company may, in the county of Kent, in the district of Shepway, in the lines or situations shown on the deposited plan and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the following works in the harbour with all necessary works and conveniences connected therewith:—

Work No. 1 Infilling and reclamation of part of the harbour to a maximum area of 1.70 hectares, commencing at a point at TR2324035891 64 metres north of the gate house and extending in a generally north-easterly direction for a distance of 100 metres to a point at TR2331735955, thence in a generally easterly direction for a distance of 82 metres to a point at TR2339535977, thence in a generally south-easterly direction for a distance of 44 metres to a point at TR2343335956, thence in a generally southerly direction for a distance of 47 metres to a point at TR2344635911 and there terminating.

Work No. 2 A wharf of solid construction on the seaward side of The Stade, commencing at a point at TR2331236036 16 metres south-west of the south-western corner of the fish market and extending in a generally east-north-easterly direction for a distance of 183 metres to a point at TR2348236103 and there terminating.

Work No. 3 A boat repair area of solid construction and of irregular shape adjoining Work No. 2, commencing at a point at TR2350836117 30 metres east-north-east of the termination of Work No. 2 and extending in a generally southerly direction for a distance of 33 metres to a point at TR2351236085 and there terminating.

Work No. 4 A slipway of solid construction adjoining Work No. 3, commencing at a point at TR2352736086 15 metres east of the termination of Work No. 3 and extending in a generally southerly direction for a distance of 66 metres to a point at TR2351436022 and there terminating.

Work No. 5 A solid face wall of steel and concrete construction on the western side of the existing east pier, commencing at a point at TR2353936145 43 metres north-east of the commencement of Work No. 3 and extending in a generally southerly direction for a distance of 190 metres to a point at TR2350535960 thence in a generally easterly direction for a distance of 8 metres to a point at TR2351335958 and there terminating.

Work No. 6 A solid face wall of steel and concrete construction on the northern side of the south wall of the harbour, incorporating openings in the said south wall, commencing at a point at TR2327335848 54 metres south-east of the commencement of Work No. 1 and extending in a generally easterly direction for a distance of 64 metres to a point at TR2333435862, thence in a generally northerly direction for a distance of 3 metres to a point at TR2333335865, thence in a generally easterly direction for a distance of 206 metres to a point at TR2353035922, thence through a curve to a southerly direction for a distance of 14 metres to a point at TR2353735913 and there terminating.

Work No. 7 A lifting bridge connecting Work No. 1 with the south wall of the harbour, commencing at a point at TR2342135906 24 metres west of the

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termination of Work No. 1 and extending in a southerly direction for a distance of 16 metres to a point at TR2342635891 and there terminating.

- (2) The Company may, within the limits of deviation, alter, replace or relay the works.

#### **4 Power to make subsidiary works**

Subject to the provisions of this Act the Company may from time to time construct and maintain within the limits of deviation all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

#### **5 Power to deviate**

In the construction of the works authorised by section 3 (Power to construct works) of this Act the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent upwards or downwards.

#### **6 Powers as to dredging and moorings**

- (1) The Company may, from time to time, deepen, widen, dredge, scour, cleanse, alter and improve the foreshore and bed of the harbour and the approaches thereto and blast any rock therein and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) from time to time dredged by them:

Provided that no materials so dredged (other than those dredged for the purpose of constructing the works) shall be deposited below the level of high water except in such position as the Secretary of State may approve and subject to such conditions or restrictions as he may impose.

- (2) The Company may provide, place, lay down, maintain and use moorings in the harbour and may make them available to any person on such terms and conditions as it thinks fit.

#### **7 Tidal works not to be executed without approval of Secretary of State**

- (1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.
- (2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this section or of any condition or restriction imposed under this section—
- (a) the Secretary of State may by notice in writing require the Company at its own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition;

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and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

## **8 Lights on tidal works during construction**

- (1) The Company shall at or near a tidal work during the whole time of the construction, alteration, replacement or re-laying thereof, exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as the Secretary of State may from time to time direct.
- (2) If the Company fails to comply with any requirement of a direction given under this section it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **9 Provision against danger to navigation**

- (1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall forthwith notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.
- (2) If the Company fails to notify Trinity House as required by this section or to comply with any requirement of a direction given under this section it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **10 Abatement of works abandoned or decayed**

- (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.
- (2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company.

## **11 Survey of tidal works**

The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Company.

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## **12 Permanent lights on tidal works**

- (1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.
- (2) If the Company fails to comply in any respect with a direction given under this section it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **PART III**

### **MISCELLANEOUS AND GENERAL**

## **13 Power to dispose of undertaking**

The Company may sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the undertaking, and in that event the purchaser, lessee, chargee or other transferee, as the case may be, shall have and may exercise, to the extent authorised by his conveyance, lease, charge or instrument of transfer, all or any of the powers in respect of the undertaking conferred upon the Company by or under any enactment, subject to all the restrictions, liabilities and obligations in respect thereof to which the Company is subject, and shall to that extent perform all the duties of the Company under such enactments.

## **14 Saving for town and country planning**

The carrying out of any works under 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 repealing 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.

## **15 Saving for powers of Company**

Subject to section 14 (Saving for town and country planning) of this Act nothing in this Act shall be taken as derogating from any power which the Company may have in relation to Folkestone Harbour under or by virtue of any enactment.

## **16 Saving for Coast Protection Act 1949**

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

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## **17 Saving for Trinity House**

Nothing in this Act shall prejudice or derogate from the powers, rights and privileges of Trinity House.

## **18 For protection of Shepway District Council**

For the protection of the Council the following provisions shall, unless otherwise agreed in writing between the Company and the Council, have effect:—

(1) In this section—

“the Council” means the District Council of Shepway;

“lock” means a confined section of water the level of which can be changed by means of a system of gates and sluices for the purpose of raising or lowering vessels between adjacent sections and includes any plant, machinery or structure (such as a wavescreen) reasonably required in connection therewith;

“the signed plan” means the plan of which four copies have been signed by the Lord Aberdare, the Chairman of the Committee of the House of Lords to whom the Bill for this Act was referred, and deposited respectively in the office of the Clerk of the Parliaments, House of Lords, the Private Bill Office of the House of Commons, the registered office of the Company and the office of the Chief Executive of the Council:

(2) Except as provided in paragraphs (3) and (4) below, the Company shall not commence Work No. 1 until a lock at the entrance of the harbour has been constructed and brought into operation:

(3) Paragraph (2) above shall not apply to any infilling and reclamation which—

- (a) is carried out for the purpose of strengthening any existing quay face or harbour wall or rendering it impervious to water penetration; and
- (b) does not extend more than five metres into the harbour from that quay face or harbour wall:

(4) Paragraph (2) above shall not apply to so much of Work No. 1 as is constructed within the area shown hatched red on the signed plan:

Provided that the Company shall not cause or permit any building within that area to be occupied until a lock at the entrance of the harbour has been constructed and brought into operation:

(5) The Company shall so construct Work No. 1 as to ensure that—

- (a) the water area of the Inner Harbour will be not less than 0.45 hectares;
- (b) a channel having a width of not less than 10 metres will be formed between the Inner Harbour and the Outer Harbour; and
- (c) the width of the water area between the areas respectively hatched red and cross-hatched green on the signed plan will at no point be less than 30 metres:

(6) Except with the consent of the Council or as provided in paragraph (7) below—

(a) in the execution of any work authorised by section 3 (Power to construct works) of this Act the Company shall not deviate by more than two metres vertically upwards from the level shown on the deposited sections in relation to that work; and

(b) in the execution of any work authorised by section 4 (Power

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to make subsidiary works) of this Act (“the section 4 work”) the Company shall not deviate by more than two metres vertically upwards from the levels shown on the deposited sections relating to the work to which the section 4 work is subsidiary.

- (7) The consent of the Council under paragraph (6) above shall not be required—
- (a) in any case where an application is required to be made for planning permission to carry out the work or part of the work in question, if that application is granted; and
  - (b) in any other case, if the Council has unreasonably withheld its consent:
- (8) Section 10 (Abatement of works abandoned or decayed) of this Act shall apply in relation to the Company as if references in that section to the Secretary of State included references to the Council:
- Provided that the Company shall not be obliged by virtue of this paragraph to do anything which is or would be inconsistent with any requirement imposed by the Secretary of State under that section:
- (9) Before exercising its powers under section 6 (Powers as to dredging and moorings) of this Act to blast any rock in the harbour or approaches thereto the Company shall—
- (a) consult with the Council and the Health and Safety Executive and have regard to any representations made by either or both of them; and
  - (b) take all reasonable steps to inform those likely to be affected by the proposed blasting operation:
- (10) In exercising the powers mentioned in paragraph (9) above the Company shall use all reasonable endeavours to ensure compliance with the provisions relating to underwater blasting (and any related provisions concerning handling and storage) contained in the British Standard Code of Practice for the safe use of explosives in the construction industry (BS5607:1988) or in any Code superseding the same:
- (11) Any difference arising between the Company and the Council under this section (otherwise than a difference as to the meaning or construction of this section) 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 President of the Royal Institution of Chartered Surveyors.

## **19 For protection of Folkestone Fishermen’s Association, Folkestone Yacht and Motor Boat Club and Royal Yachting Association**

For the protection of the Folkestone Fishermen’s Association (“the Association”), the Folkestone Yacht and Motor Boat Club (“the Club”) and the Royal Yachting Association (“the RYA”) the following provisions shall have effect, unless otherwise agreed in writing between the Company and the Association (in the case of paragraphs (1) (a), (2) (a), (3), (4) (a), (9) to (14), (17) and (18) below), between the Company and the Club (in the case of paragraphs (1) (b), (2) (b), (3), (4) (b) and (5) to (18) below), or between the Company and the RYA (in the case of paragraphs (14) to (16) and (18) below):—

- (1) The Company shall each year offer to grant—
- (a) not fewer than 25 annual mooring licences to members of the Association; and
  - (b) not fewer than 36 annual mooring licences to such members of the Club as the Club may determine;



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such licences to be for such type or types of moorings as the Company may determine:

- (2) During the construction of the works the Company shall continue to offer in accordance with paragraph (1) above—
- (a) facilities for mooring 25 fishing vessels to members of the Association; and
  - (b) facilities for mooring 36 pleasure craft (being yachts and motor vessels) to members of the Club;

albeit in either case if necessary in different locations in the harbour than those existing at the date of the passing of this Act; and during the construction of those works the Company shall continue to maintain facilities for the supply of fresh water for the filling of vessel water tanks:

- (3) The Company shall be responsible for moving any mooring sinkers or, as the case may be, laying temporary mooring sinkers, in connection with the discharge of its duties under paragraph (2) above:
- (4) The Company shall use its reasonable endeavours to ensure that—
- (a) so far as is practicable the moorings occupied by members of the Association from time to time are located in the north-eastern part of the harbour; and
  - (b) so far as is practicable (having regard to the overall requirements of persons wishing to use the harbour), the moorings occupied by members of the Club from time to time are reasonably contiguous:
- (5) Without prejudice to paragraph (1) above, the licences which the Company is required to offer to grant to members of the Club under sub-paragraph (b) thereof shall be for moorings for such sizes of vessel as the Club may reasonably request, having regard to the fact that the Club represents the interests of the owners of yachts and the owners of motor boats:
- (6) The Company shall re-locate the existing ladder on the west face of the harbour (or provide a substitute therefor) so as to ensure that there is access by ladder to the harbour at all times during and after construction of the works:
- (7) In the event of the Company constructing Work No. 2 in such a manner as to necessitate the removal of the existing slipway near the existing Fish Market before Work No. 4 becomes operational, then provided that the Company obtains all relevant planning consents (which it shall use its reasonable endeavours to obtain), the Company shall in connection with Work No. 2 construct a temporary slipway to be located as near as possible to the site of the existing slipway and that temporary slipway—
- (a) shall be suitable for the launching and recovery of dinghies including those on road trailers; and
  - (b) shall be capable of accommodating any goods vehicle having a maximum laden weight not exceeding 3 tonnes in connection with the loading of fish for commercial purposes and the transportation of commercial fishing gear;

and shall be made available by the Company on the same basis as the existing slipway until such time as Work No. 4 becomes operational:

- (8) The Company shall use its reasonable endeavours to ensure that the temporary slipway becomes operational as soon as practicable after the existing slipway has been removed:

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- (9) Subject to paragraph (10) below, upon the completion of Work No. 4 the Company shall make it available for use by the public on such terms and conditions (including the payment of reasonable charges) as the Company thinks fit for the purpose of launching and recovering vessels and the Company shall provide reasonable facilities adjacent to Work No. 4 for the scrubbing, anti-fouling and maintenance of vessels belonging to members of the Association or of the Club by such members or their appointees (on such terms and conditions as aforesaid save that the use for such activities shall not be the subject of a separate charge):
- (10) The Company shall not levy a separate charge for the use of Work No. 4 for the launching and retrieving of vessels by any member of the Association or of the Club who has for the time being an annual mooring licence issued by the Company, and any charge for the use of that work by such a person shall be incorporated in the charge made for the use of his mooring:
- (11) Subject to paragraph (12) below, paragraphs (2) to (4) of section 18 (For protection of Shepway District Council) shall (with the exception of the proviso to the said paragraph (4)) apply in relation to the Association and the Club as they apply in relation to the District Council of Shepway (hereinafter referred to as “the Council”):
- (12) In the event of the Council agreeing with the Company that the Company may construct any part of Work No. 1 in addition to that shown hatched red on the signed plan or permitted by paragraph (3) of the said section 18 (For protection of Shepway District Council) without a lock at the entrance to the harbour having first been constructed and brought into operation, the Company—
- (a) shall submit to the Association and the Club details of the steps it proposes to take in order to avoid or minimise the effects of turbulence upon the mooring of vessels in the harbour in consequence of that construction or, as the case may be, an explanation of the reasons why no such steps are considered to be necessary, for the consideration and approval of the Association and the Club, such approval not to be unreasonably withheld or delayed; and
  - (b) shall not construct the part of Work No. 1 in question unless the Company has taken all such steps (if any) as have been—
    - (i) approved by the Association and the Club under sub-paragraph (a) above; or
    - (ii) determined by the arbitrator under paragraph (18) below; as necessary in order to ensure that turbulence in the harbour will not be significantly worse (as regards its effects upon the mooring of vessels) following construction of that part than that generally prevailing at the date of the passing of this Act:
- (13) Without prejudice to paragraphs (11) and (12) above, in the event of the Company exercising its powers under subsection (2) of section 6 (Powers as to dredging and moorings) of this Act in order to construct pontoon moorings, the Company shall take all such steps as may be reasonably necessary in order to ensure that those moorings are not subjected to such turbulence as would be likely to cause injury to any person using such a mooring or damage to any vessel at such a mooring:
- (14) Notwithstanding anything contained in this Act the Company shall not have power to charge more than a reasonable fee for the use of any mooring provided under subsection (2) of the said section 6:

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- (15) The Company shall ensure that the person in charge of any vessel having a mooring in the harbour which is accessible from the sea only by passing under a bridge constructed by the Company in pursuance of this Act shall be entitled (except in an emergency) to call for that bridge to be raised on demand in order to enable that vessel to pass thereunder in either direction:

Provided that if there is more than one such bridge the Company shall determine which bridge is to be so raised and shall be entitled to complete the operating sequence of any lock which may be constructed at the entrance to the harbour before attending to raise such bridge:

- (16) In the event of the Company exercising its powers under subsection (2) of the said section 6 in order to construct pontoonmoorings, the Company shall use its reasonable endeavours to ensure that certain of those moorings are available on a temporary basis for yachts visiting the harbour from elsewhere and that such facilities for visiting yachts are reasonably adequate to meet the anticipated demand from time to time arising; and, without prejudice to the generality of the foregoing, the Company may provide such facilities by reserving rights to make use of moorings held under annual licence which are temporarily unoccupied by the licence-holders:
- (17) (a) The Company shall not construct Work No. 2 so that any part of the southern face thereof extends more than 7 metres from the centre line of that work as shown on the deposited plans: Provided that the Company may construct in connection with Work No. 2 the temporary slipway referred to in paragraph (7) above and a vehicle turning area having a width of not more than 25 metres;
- (b) Not more than a total of 7 metres of the length of Work No. 2 (viewed horizontally in section) shall be constructed to a height which is the same or greater than that of The Stade:
- (18) Any difference arising between the Company, the Association, the RYA or the Club under this section (otherwise than a difference as to the meaning or construction of this section or the reasonableness of charges made by the Company) 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 any party (after notice in writing to the others) by the President of the Royal Institution of Chartered Surveyors.

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

For the protection of the British Railways Board (“the railways board”) the following provisions shall, unless otherwise agreed in writing between the Company and the railways board for the purposes of this section, have effect:—

- (1) In this section—

“construction” includes execution, reconstruction and, where the context so admits, maintenance and repair of the specified works;

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

“plans” includes sections, drawings, particulars and schedules of construction;

“railway property” means any railway of the railways board, and any viaduct, works, apparatus and equipment connected therewith for the maintenance or operation of which the railways board are responsible when the relevant specified works are begun and includes any lands held or used by the railways board for the purposes of such railway or works;

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“the specified works” means so much of the works as may be situated or be carried out upon, across, under, over or within 15 metres of railway property and so much of any exercise of the powers of section 6 (Powers as to dredging and moorings) of this Act as may have a materially adverse effect upon such property:

- (2) The Company shall, before commencing the construction of the specified works, furnish to the railways board such proper and sufficient plans thereof as may reasonably be required 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 notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted:

- (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 the engineer is satisfied will or may affect the stability of railway property and the safe operation of the railways of the railways board, then, if the Company desires such part of the specified works to be constructed, the railways board shall construct it 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 the engineer is satisfied should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property or the continuation of safe and effective operation of the railways of the railways board including any relocation of works, apparatus and equipment necessitated by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by the railways board with all reasonable dispatch or, if the railways board so desire, such protective works shall be carried out by the Company at its own expense 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 satisfactorily completed:
- (5) The Company shall give to the engineer not less than 28 days' notice of its intention to commence the construction of any of the specified works and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its 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:
- (6) The construction of the specified works and of any protective works carried out by the Company by virtue of the provisions of paragraph (4) above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of the railways board and the use by passengers of railway property and, if any damage to railway property or any such interference is caused by the carrying out of the specified works, the Company shall, notwithstanding any such approval as aforesaid make good such damage and shall pay to the railways

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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 or interference:

Provided that nothing in this paragraph shall impose any liability on the Company with respect to any damage, cost, expense or loss which is attributable to the wrongful act, neglect or default of the railways board or their servants or agents:

- (7) The Company shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof:
- (8) During the construction of any works by the railways board under this section the railways board shall at all times afford reasonable facilities to the Company and its agents for access to those works, and shall supply the Company with such information as it 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 during the construction of the specified works, or during a period of 12 months after the completion thereof, directly as a result of the construction of the specified works, such alterations and additions may be carried out by the railways board and if the railways board give to the Company reasonable notice of their intention to carry out such alterations or additions, the Company shall pay to the railways board the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the railways board in maintaining, working and, when necessary, renewing any such alterations or additions:

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 Company to the railways board under this section:

- (10) The Company shall repay to the railways board all reasonable 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 costs which may be expected to be reasonably incurred by the railways board in maintaining and renewing such works;
  - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction 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, require to be imposed by reason of the construction or failure of the specified works, or from the substitution, suspension or diversion of services which may be reasonably necessary for the same reason;

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- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction or failure of the specified works;
  - (e) in respect of the approval by the engineer of plans submitted by the Company and the supervision by him of the construction of the specified works:
- (11) The Company shall be responsible for, and make good to the railways board, all reasonable 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 construction by the Company of the specified works or the failure thereof; or
  - (b) by reason of any act or omission of the Company or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and the Company shall indemnify the railways board from and against all claims and demands arising out of the construction of the specified works or any such failure, act or omission as aforesaid:

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:

- (12) 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 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 President of the Institution of Civil Engineers.

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

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

- (1) In this section—

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

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water (including sea water);

“plans” includes sections, drawings, specifications, method statements and other such particulars;

“specified work” means so much of any work or operation authorised by this Act as is in, on, under or over a watercourse or is otherwise likely to affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;

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

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- (2)
  - (a) Before beginning to construct any specified work, the Company shall submit to the Authority plans of the work and such further particulars available to it as the Authority may reasonably require;
  - (b) A specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Authority, or settled in accordance with the provisions of paragraph (9) below;
  - (c) Any approval of the Authority required under this paragraph—
    - (i) shall not be unreasonably withheld;
    - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;
    - (iii) may be given subject to such reasonable requirements as the Authority may impose for the protection of any drainage work and for the prevention of flooding:
- (3) Without prejudice to the generality of paragraph (2) above, the requirements which the Authority may impose under that paragraph include conditions requiring the Company at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work:
- (4) Any specified work, and all protective works required by the Authority under paragraph (2) above, shall be constructed to the reasonable satisfaction of the Authority and the Authority shall be entitled by its officer to watch and inspect the construction of such works:
- (5) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Authority and, if the Company fails to do so, the Authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing:
- (6) The Company shall repay to the Authority all reasonable costs, charges and expenses which the Authority may reasonably incur—
  - (a) in the approval of plans under this section;
  - (b) in the inspection of the construction of the specified works or any protective works required by the Authority under this section:
- (7)
  - (a) Without prejudice to the other provisions of this section the Company shall indemnify the Authority from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or reasonably incurred by, the Authority by reason of—
    - (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
    - (ii) any raising of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses; or
    - (iii) any flooding or increased flooding of any such land;which may be caused by, or result from, the construction of any of the works or any act or omission of the Company, its contractors, agents, workmen or servants whilst engaged upon the works;

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- (b) The Authority shall give to the Company reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Company:
- (8) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Authority, or to its 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:
- (9) Any difference arising between the Company and the Authority under this section (other than a difference as to the meaning or construction thereof) 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 President of the Institution of Civil Engineers.

## **22 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 Company to take, use, enter upon or in any manner interfere with any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—
  - (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 may be considered necessary or appropriate.