



# River Humber (Upper Pyewipe Outfall) Act 1992

## 1992 CHAPTER xv

### PART IV

#### MISCELLANEOUS

#### **21 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 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;
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

#### **22 For protection of Associated British Ports**

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

- (1) In this section—
- “construction” includes execution and placing, renewal, diversion or alteration and removal; and “constructed” shall be construed accordingly; and

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“plans” includes sections and “approved plans” means plans approved or deemed to have been approved by A.B. Ports or settled by arbitration:

- (2) (a) Before commencing the construction of any part of a tidal work, plans showing the general mode of construction thereof shall be delivered by the Company to A.B. Ports for its approval (which approval shall not be unreasonably withheld), and such tidal work shall not be constructed otherwise than in accordance with such plans as may be approved by A.B. Ports or as may be determined by the Secretary of State as hereinafter provided and all such work shall be executed to the reasonable satisfaction of A.B. Ports;
- (b) Without prejudice to the generality of sub-paragraph (a) above, with the exception of any outlet port forming part of the works, no part of any tidal work shall be constructed otherwise than at a level of two metres or more below the bed of the river and with a minimum of two metres of a suitable covering material placed above that work;
- (3) After the purpose for which any temporary works were placed or conveniences connected therewith in the river were constructed under the powers of this Act has been accomplished, the Company shall, with all reasonable despatch, remove any such works or conveniences and, if without reasonable cause it fails to do so, A.B. Ports may remove the same, charging the Company with the reasonable expense of so doing, and the Company shall repay to A.B. Ports all such expense;
- (4) The Company shall before commencing any dredging in the river under the powers of this Act except in an emergency deliver to A.B. Ports for its approval (which approval shall not be unreasonably withheld) plans defining the nature, extent and manner of such dredging, and such dredging shall not be carried out otherwise than in accordance with approved plans and in such manner as may be approved by A.B. Ports or as may be settled by arbitration;
- (5) If A.B. Ports fails to express its disapproval of any plans within 56 days after they have been delivered to it in pursuance of this section, it shall be deemed to have approved them;
- (6) (a) If during the construction of the works, or within the prescribed period, it is agreed between the Company and A.B. Ports or, in default of agreement, it is proved to the satisfaction of an arbitrator to be appointed in accordance with section 27 (Arbitration) of this Act that any accumulation or erosion has been caused wholly or partly by the construction of the works or the carrying out of any dredging operation under section 6 (Power to dredge) of this Act, the Company shall carry out such remedial work as may be agreed or in default of agreement as may be proved to the satisfaction of the arbitrator to be reasonably required as a result of the construction of the works or the carrying out of any dredging operation as aforesaid and, if the Company refuses or fails so to do, A.B. Ports may itself cause the work to be done and may recover the reasonable cost thereof from the Company;
- (b) In this paragraph—
  - “accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;
  - “erosion” means any erosion of the river bed or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;
  - “remedial work” means—

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- (i) in the case of an accumulation, its removal; and
    - (ii) in the case of erosion, such reconstruction works and other protective works or measures as may be necessary; and
- “the prescribed period” means a period of 5 years after the completion of the works and, if during that period there has been an accumulation or erosion such as to give rise to an obligation by the Company under this paragraph to carry out remedial work, a further period of 5 years:
- (7) During any dredging operations carried out by the Company in the course of the construction of the works, the Company shall—
    - (a) provide and maintain to the reasonable satisfaction of A.B. Ports such lighted mooring or other buoys at any deposit ground in the river which may be approved for the deposit of dredgings by the Company from the site of the works; and
    - (b) take all such other steps;as may be required by A.B. Ports to prevent danger to navigation:
  - (8) The Company shall at all reasonable times during construction of the works and thereafter allow A.B. Ports, its servants and agents, access to the works:
  - (9) The Company shall not acquire compulsorily under the powers of this Act the interests of A.B. Ports in the lands numbered 2 and 3 in the borough of Cleethorpes and 2 in the borough of Great Grimsby on the deposited plan but the Company may in accordance with the provisions of section 17 (Purchase of rights over land) of this Act acquire compulsorily such rights in the said lands as it may reasonably require for the purposes of the works:
  - (10) The Company shall pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work:
  - (11) (a) Without prejudice to the other provisions of this section, the Company shall be responsible for, and make good to A.B. Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—
    - (i) the perusal of plans and the inspection of any of the works or the regulation of any dredging operation by A.B. Ports or its duly authorised representative;
    - (ii) the carrying out of such surveys, inspections, tests and sampling within the river as A.B. Ports after consultation with the Company reasonably considers necessary to establish whether or not the discharge or dispersal of effluent into the river by means of any of the works is causing or has caused any damage to or deterioration of any existing jetty or other structure owned or occupied by A.B. Ports;
    - (iii) the construction or maintenance of any of the works or the carrying out of any dredging operation, the discharge or dispersal of effluent into the river by means of any of the works, the failure of any of the works or the undertaking by A.B. Ports of works or measures to prevent or remedy damage to any property of A.B. Ports arising from such construction, carrying out, discharge or dispersal, or failure;

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- (iv) any act or omission of the Company or its servants or agents whilst engaged in the construction or maintenance of any of the works or the carrying out of any dredging operation;
  - (b) Without prejudice to the generality of sub-paragraph (a) above the Company shall indemnify A.B. Ports against all claims and demands arising out of, or in connection with, such construction, carrying out, discharge or dispersal, failure or act or omission as is mentioned in that sub-paragraph;
  - (c) A.B. Ports shall give to the Company notice of any claim or demand made against it which is a claim or demand for which the Company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company:
- (12) The fact that any work or thing has been executed or done with the consent of A.B. Ports and in accordance with any conditions or restrictions prescribed by A.B. Ports or in accordance with plans approved or deemed to be approved by A.B. Ports or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the Company from any liability under the provisions of this section:
- (13) With the exception of any duty owed by A.B. Ports to the Company expressly provided for in the foregoing provisions of this section, nothing in this Act shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any court:
- (14) Subject to the provisions of section 17 (Purchase of rights over land) of this Act, nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports at the commencement of this Act or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it:
- (15) Any difference arising between the Company and A.B. Ports under this section (other than a difference as to the construction of this section) shall be referred to and settled by arbitration.

## **23 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 and placing, renewal, diversion or alteration and, in relation to temporary works, also includes removal; and “construct” and “constructed” have corresponding meanings;

“plans” includes drawings and specifications and a description of the method of carrying out the specified works; but as regards a work of maintenance, repair or renewal means a description of the specified works only;

“protective works” means any temporary or permanent works constructed or measures taken under paragraph (3) below necessary to ensure the stability of a sea defence work or to protect it or a watercourse from injury or to ensure

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the maintenance of the flow of all water which but for the construction of the specified work would have flowed through a watercourse;

“sea defence work” means so much of the sea defence as is for the time being under the jurisdiction of the authority for the purpose of the Land Drainage Act 1991 and the Water Resources Act 1991 and includes the land lying between the said defence and the level of low water;

“specified work” means any of the works carried out between a point 9 metres landward of the landward toe of the Humber Bank sea defence embankment and the level of low water; and

“temporary works” means any temporary structures which may be necessary to enable the specified works to be constructed:

- (2)
  - (a) Not less than 56 days before commencing the construction of any specified work or 28 days in the case of any additional temporary works or alteration required during the construction of such work, the Company shall submit plans of such work to the authority for their approval, which shall not be unreasonably withheld, and shall not commence the specified work until such plans have been approved by the authority or, in the case of any difference, until they have been settled by arbitration;
  - (b) If the authority do not within 56 days or, in the case of additional temporary works or alterations, 28 days after receipt of any such plans signify to the Company their disapproval thereof and the grounds for their disapproval, they shall be deemed to have approved them;
  - (c) Not less than 14 days before commencing any work of maintenance or repair of a specified work the Company shall, except in the case of emergency, submit to the authority for their information a notice of intention to commence the work and a description of the work:
- (3) Upon signifying their approval or disapproval of the said plans the authority may specify any reasonable protective works which in their opinion should be carried out or undertaken by the Company during the construction of the specified work and the works so specified shall be constructed by the Company at its own expense and under the supervision (if given) and to the reasonable satisfaction of the authority:
- (4)
  - (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 by the authority as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the authority who shall be given at least 7 days' notice of the date and time on and at which the work is to be commenced;
  - (b) The Company shall at all reasonable times during the construction of a specified work afford to the authority access to such specified work for the purpose of inspection;
  - (c) As soon as is reasonably practicable after the completion of a specified work or thereafter upon 14 days' notice in writing from the authority requiring it so to do the Company shall remove so much of the work as consists only of temporary works carried out for the purpose of such construction:
- (5)
  - (a) Plans of any specified work shall not be submitted by the Company to the Secretary of State under section 9 (Tidal works not to be executed without approval of Secretary of State) of this Act until plans of that work have been approved by the authority or referred for settlement under paragraph (10) below and, if, on the submission of plans to the Secretary of State, he requires

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- any alteration of the plans so approved or settled under this section, or of any such requirement relating thereto, the Company shall, not less than 28 days before commencing the work inform the authority of any such alteration;
- (b) When submitting any plans to the Secretary of State under the said section 9, the Company shall send a copy of the plans to the authority and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that section, send a copy to the authority:
- (6) (a) Any specified work constructed under this Act which provides a defence against flooding shall be maintained by and at the expense of the Company to the reasonable satisfaction of the authority;
- (b) If any such work is no longer required by the Company or is not maintained to the reasonable satisfaction of the authority, they may by notice in writing require the Company at its own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the authority think proper;
- (c) If, on the expiration of 30 days from the date on which a notice is served upon the Company, it has failed to comply with the requirements of the notice, the authority may execute the works specified in the notice, and any expenditure incurred by them in so doing shall be recoverable from the Company.
- (7) If by reason of the construction of a specified work or of its maintenance, repair, alteration, renewal or removal or by reason of the failure of that work or of the Company to maintain it the efficiency of any sea defence work of the authority is impaired or that work is damaged, the Company shall make good such impairment or damage 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 them in so doing:
- (8) (a) The Company shall indemnify the authority in respect of all charges, claims, costs, expenses and losses which the authority may reasonably incur or have to pay or which they may sustain by reason of the carrying out of the works or any protective works or by reason of their maintenance, repair, alteration, renewal or removal;
- (b) The authority shall give to the Company reasonable notice of any such charges or claims and no settlement or compromise thereof shall be made without the agreement of the Company whose agreement shall not be unreasonably withheld;
- (c) 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 their satisfaction or in accordance with any direction or award of an arbitrator shall not relieve the Company from any liability under the provisions of this section:
- (9) Nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the authority:
- (10) Any difference arising between the Company and the authority under this section (other than a difference as to the construction of this section) shall be referred to and settled by arbitration.

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## **24 Saving for Trinity House**

Nothing in this Act shall prejudice or derogate from the rights or privileges or the jurisdiction or authority of the Corporation of Trinity House of Deptford Strond.

## **25 Saving for Food and Environment Protection Act 1985**

Nothing in this Act shall affect the operation of Part II of the Food and Environment Protection Act 1985 (which relates to deposits in the sea).

## **26 Planning permission**

- (1) In this section “Part 11 development” means development permitted by article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 (which permits development authorised by private Act designating specifically both the nature of the development thereby authorised and the land on which it may be carried out).
- (2) Subject to the provisions of subsection (3) below, in its application to development authorised by this Act, the planning permission granted for Part 11 development shall have effect as if the authority to develop given by this Act were limited to development begun within 10 years after the passing of this Act.
- (3) Subsection (2) above shall not apply to the carrying out of any development consisting of the shortening, reduction, alteration, renewal, replacement, relaying, reconstruction, enlargement, maintenance or repair of works or the substitution of new works therefor.

## **27 Arbitration**

Where under any provision of this Act any difference (other than a difference as to the meaning or construction of any such provision) is to be referred to or settled by arbitration, then such difference shall be referred to and settled by a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.