



# Cattewater Reclamation Act 1992

## 1992 CHAPTER xiv

An Act to empower New Cattedown Limited to construct works in the Cattewater in the city of Plymouth; to authorise the Company to acquire lands; and for other purposes. [16th July 1992]

WHEREAS—

- (1) New Cattedown Limited (hereinafter referred to as “the Company”) are a company incorporated under the Companies Act 1985, being a joint venture company formed by private enterprise and the Plymouth City Council:
- (2) The Cattedown area in the city of Plymouth (hereinafter referred to as “the city”) is in urgent need of comprehensive urban regeneration and is within the defined core area designated by the Government for the purposes of the urban programme as an inner urban area:
- (3) There is a shortage of industrial land within the city:
- (4) An area of waterfront development in the city is essential to form the catalyst for further development and the Company intend to carry out the waterfront development including additional port related uses:
- (5) It is expedient that the Company should be empowered to construct the works described in this Act and to acquire lands therefor:
- (6) The purposes of this Act cannot be effected without the authority of Parliament:
- (7) A plan and sections showing the lines or situations and levels of the works by this Act authorised, such plan showing also the land which the Company may acquire or use under the powers of this Act, and a book of reference to such plan containing the names of the owners or reputed owners, lessees or reputed lessees and of the occupiers of all such lands and describing the same 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 the Devon County Council which plan, sections and book of reference are in this Act referred to respectively as the deposited plan, the deposited sections and the deposited book of reference:

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

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Cattewater Reclamation Act 1992.

#### 2 Interpretation

(1) In this Act, unless the subject or context otherwise requires—

“the Act of 1965” means the Compulsory Purchase Act 1965;

“the city” means the city of Plymouth;

“the City Council” means the council of the city;

“the Commissioners” means the Cattewater Harbour Commissioners;

“the Company” means New Cattedown Limited;

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

“new rights” means easements or other rights to be created in favour of the Company, including rights restricting the use of land; and the expression “new right” shall be construed accordingly;

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

“the tribunal” means the Lands Tribunal;

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

“the works” means the works authorised by subsection (1) of section 13 (Power to construct work) of this Act including those works as altered, replaced or re-laid under subsection (2) of that section and any works constructed under section 14 (Subsidiary works) of this Act and “work” shall be construed accordingly.

(2) References in this Act to grid references refer to the map co-ordinates on the National Grid used by the Ordnance Survey and shall be construed as if the words “or thereabouts” were inserted after each grid reference.

#### 3 Application of enactments

(1) The provisions of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this Act and, as so incorporated, shall have effect as if—

(a) for the words “the period by the special Act limited for the completion of the railway” there were substituted the words “the period of five years from the commencement of the construction of the works authorised by the special Act”;

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- (b) the expression “the company” meant the Company; and
  - (c) the expression “the railway” meant the works authorised by this Act and “the centre of the railway” meant the centre line of the works respectively.
- (2) (a) Part I of the Act of 1965 (except section 4, section 27, and paragraph 3 (3) of Schedule 3 thereto), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Part II of the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981.
- (b) In section 11 (1) of the Act of 1965, as so applied, for the words “fourteen days” there shall be substituted the words “three months”.
  - (c) The Lands Clauses Consolidation Act 1845 shall not apply to the acquisition of land under this Act.
- (3) Part II and Part III of Schedule 2 to the Acquisition of Land Act 1981 shall apply to the compulsory acquisition of land under this Act as if this Act were a compulsory purchase order which incorporated those provisions.

## PART II

### LANDS

#### 4 Power to acquire lands

- (1) Subject to the provisions of this Act, the Company may enter upon, take and use such of the lands delineated on the deposited plan and described in the deposited book of reference as they may require for the purposes of constructing and maintaining the works and obtaining access to the works or otherwise for the purposes of this Act or other purposes connected therewith.
- (2) (a) The powers of the Company for the compulsory acquisition of lands under this section shall not be exercised after 31st December 1995.
- (b) The power to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if before 31st December 1995 notice to treat has been served in respect of that land.

#### 5 Power to acquire new rights only

- (1) The Company may, instead of acquiring any land under section 4 (Power to acquire lands) of this Act, acquire compulsorily such new rights as they require in, over or under the land.
- (2) In relation to the compulsory acquisition of a right by virtue of subsection (1) above, section 251 of the Highways Act 1980 (rights acquired to be binding on successive owners of the land) shall apply—
- (a) as if references to such a compulsory acquisition were included in references to the compulsory acquisition of a right by virtue of section 250 of that Act;
  - (b) as if any such acquisition were made by a compulsory purchase order made in exercise of highway land acquisition powers;

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- (c) as if references in that section to a highway authority were references to the Company; and
  - (d) as if references in subsection (4) of that section to another highway authority were references to a local authority.
- (3) Any new right acquired under this section, whether compulsorily or by agreement, shall be a local land charge.
- (4) (a) The Company may give notice to treat in respect of any new right describing the nature thereof; and the Act of 1965, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory acquisition of new rights under subsection (1) above as it applies to the compulsory acquisition of land so that, in appropriate contexts, references in that Act to land are read as referring, or as including references, to the new rights or to land in, over or under which the new rights are or are to be exercisable according to the requirements of the particular context.
- (b) Without prejudice to the generality of paragraph (a) above, in relation to the purchase of the new rights in pursuance of subsection (1) above—
- (i) Part I of the Act of 1965 shall have effect with the modifications specified in the Schedule to this Act;
  - (ii) the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.
- (5) The Company may, with or without consideration, release either wholly or partly any new right acquired under this section.
- (6) Where the Company have acquired only a new right in, over or under any land under this section they shall not be required or, except by agreement or during the execution of the works, entitled to fence off or sever that land from the adjoining land.

## **6 Correction of errors in deposited plan and book of reference**

- (1) If the deposited plan or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the Company after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question, may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.
- (2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.
- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments, and a copy thereof in the Private Bill Office, House of Commons and with the Chief Executive of the Devon County Council and thereupon the deposited plan and the deposited book of reference shall be deemed to be corrected according to the certificate, and it shall be lawful for the Company to take the land or an easement therein (as the case may be) and execute the works in accordance with the certificate.
- (4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

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## **7 Disregard of recent improvements and interests**

In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land or new rights under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land by reason of any building erected, works executed, or improvement or alteration made, whether in the land acquired or on any other land with which the claimant is, or was at the time of the carrying out of the building, works, improvement or alteration, directly or indirectly concerned if the tribunal are satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration (as the case may be) was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

## **8 Extinction of rights affecting land**

- (1) All rights, in, over or under any land which may be acquired or appropriated by the Company for the purposes of this Act shall, as from the acquisition or appropriation of the land, be extinguished:

Provided that nothing in this subsection shall affect any right vested in, or any main, pipe, wire, drain, sewer or other works and apparatus belonging to, any undertaking for the supply of water or gas or of a licence holder pursuant to section 6(1) of the Electricity Act 1989 for telecommunication, for sewerage or sewage disposal or for land drainage which is so vested, or so belongs as the case may be, for the purposes of the carrying on of the undertaking.

- (2) Any person who suffers loss by the extinguishment of any private right under this section shall be entitled to compensation paid by the Company in an amount which is to be determined in case of dispute by the tribunal in accordance with the enactments relating to compensation for the compulsory purchase of land.

## **9 Grant of new rights by person under disability**

- (1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, subject to the provisions of the Act of 1965, grant to the Company any new right in, over or under the lands required for the purposes of this Act which he is able and willing to grant.
- (2) The provisions of the Act of 1965 with respect to lands and rentcharges, so far as they are applicable, shall extend and apply to any such grant and to any such new right as aforesaid.

## **10 Agreements with adjoining owners**

- (1) The Company may enter into and carry into effect agreements with any person being the owner of, or interested in, any land adjoining any portion of the works, or of the land which may be acquired by the Company under this Act, with respect to the sale by the Company to him (subject to such reservations, restrictions or other provisions as to the Company seem fit) of any land not required for the works.
- (2) The Company may accept as satisfaction for the whole or any part of the consideration for any such sale the grant by the purchaser of any land required by the Company for the purposes of this Act or any new right so required.

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## **11 Power to reinstate owners or occupiers of property**

- (1) The Company may enter into and carry into effect an agreement or arrangement with the owner or occupier of any land acquired or to be acquired under this Act with respect to his reinstatement.
- (2) Any such agreement may provide for the exchange of land; and for that purpose the Company may pay or receive money for equality of exchange.

## **12 Temporary use of land**

- (1) In this section “the specified lands” means the lands delineated on the deposited plan and thereon numbered 4, 5, 6 and 7 in the city.
- (2) The Company in connection with the construction of the works and after giving to the owners and occupiers of the specified lands not less than 28 days' previous notice in writing, may use the specified lands for the purpose of obtaining access from and to the works.
- (3) On the exercise of the powers conferred by this section the Company shall not be empowered to purchase compulsorily or be required to purchase any part of the specified lands.
- (4) On the exercise of the powers conferred by this section, the following provisions shall have effect:—
  - (a) the Company shall compensate the owners and occupiers of the specified lands for any loss or damage which may result to them by reason of the exercise of the powers of this section;
  - (b) nothing in this section shall relieve the Company from liability to compensate under section 10 (2) of the Act of 1965, as incorporated with or applied by this Act, or under any other enactment, in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (a) above;
  - (c) any dispute as to a person's entitlement to compensation under paragraph (a) above or as to the amount thereof shall be determined by the tribunal.

## **PART III**

### **WORKS**

## **13 Power to construct work**

- (1) Subject to the provisions of this Act, the Company may make and maintain in the lines and situations and upon the lands delineated on the deposited plan and according to the levels shown on the deposited sections the following work in the city that is to say:—

Work No. 1 A land reclamation along the Cattewater shore from the wharf adjacent to the disused power station to Cattedown Wharves and into the Cattewater commencing at grid reference SX4986 5382 then curving in a southerly direction for a distance of 30 metres or thereabouts to grid reference SX4987 5380 then proceeding in a generally south-south-westerly direction for a distance of 280 metres or thereabouts to grid reference SX4975 5355 then curving in a generally westerly direction for a distance of 60 metres or thereabouts to grid reference SX4970 5352 then proceeding in a generally

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westerly direction for a distance of 60 metres or thereabouts and terminating at grid reference SX4964 5352 on the shoreline.

- (2) The Company may, within the limits of deviation for the said work, alter, replace or re-lay the same.
- (3) The Company may by means of the work fill in, and reclaim from the foreshore and bed of the sea and may hold and use, so much of the foreshore and bed of the sea as is situated within the limits of deviation.

#### **14 Subsidiary works**

- (1) Subject to the provisions of this Act, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works authorised by this Act.
- (2) The right conferred by subsection (1) above may only be exercised with the consent of the Commissioners such consent not to be unreasonably withheld.
- (3) Any dispute as to whether or not consent sought pursuant to subsection (2) above is being unreasonably withheld shall be determined 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 Institute of Arbitrators.

#### **15 Power to deviate**

In the construction of the works authorised by section 13 (Power to construct work) 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 shown on that plan and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 5 metres upwards or to any extent downwards.

#### **16 Power to dredge**

- (1) Subject to the provisions of section 24 (Crown rights) of this Act, the Company may, for the purposes of constructing and maintaining the works from time to time deepen, dredge, scour, cleanse, alter and improve the foreshore and bed of the sea and blast any rock 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 or filling in and reclaiming from the foreshore and bed of the sea so much of the foreshore and bed of the sea as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

- (2) The right conferred by subsection (1) above may only be exercised with the consent of the Commissioners such consent not to be unreasonably withheld.
- (3) Any dispute as to whether or not consent sought pursuant to subsection (2) above is being unreasonably withheld shall be determined by a single arbitrator to be agreed

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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 Institute of Arbitrators.

#### **17 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 their 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 they have 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; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

#### **18 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, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.
- (2) If the Company fail to comply with any requirement of a direction given under this section they 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.

#### **19 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 as soon as reasonably practicable 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 fail to notify Trinity House as required by this section or to comply with any requirement of a direction given under this section they 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.

#### **20 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 their 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.



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- (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, they have 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.

## **21 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.

## **22 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 fail to comply in any respect with a direction given under this section they 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.

## **23 Saving for Trinity House**

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

# **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

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- (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 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

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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.

## **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:

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- (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:
- (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,

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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);

“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:

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- (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;
- 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

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- 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:
- (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:

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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;

“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



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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;
  - (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

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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.

### **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

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## SCHEDULE

Section 5.

ADAPTATION OF PART I OF THE ACT OF 1965 IN  
CONNECTION WITH PURCHASE OF NEW RIGHTS

- 1 In the Act of 1965 (hereinafter in this Schedule referred to as “the Act”) for section 7 (which relates to compensation) there shall be substituted the following:—
- “7 (1) In assessing the compensation to be paid by the Company under this Act regard shall be had not only to the extent, if any, to which the value of the land in, over or under which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by exercise of the right.
- (2) The modifications subject to which subsection (1) of section 44 of the Land Compensation Act 1973 is to have effect, as applied by subsection (2) of that section to compensation for injurious affection under this section, are that for the words ‘land is acquired or taken’ there shall be substituted the words ‘a right in, over or under land is purchased’ and for the words ‘acquired or taken from him’ there shall be substituted the words ‘in, over or under which the right is exercisable’.”
- 2 The following provisions of the Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely:—
- section 9 (4) (failure of owners to convey);
- paragraph 10 (3) of Schedule 1 (owners under incapacity); and
- paragraph 2 (3) of Schedule 2 (absent and untraced owners);
- shall be so modified as to secure that as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the Company.
- 3 Section 11 (power of entry) of the Act shall be so modified as to secure that as from the date on which the Company have served notice to treat in respect of any right they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on sheriff’s warrant in the event of obstruction) of the Act shall be modified correspondingly.
- 4 Section 20 (compensation of short-term tenants) of the Act shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.
- 5 Section 22 (protection of acquiring authority’s possession of land where by inadvertence an interest in the land has not been purchased) of the Act shall be so modified as to enable the Company, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation.