



Tamar Bridge Act 1998

1998 CHAPTER iv

PART V

MISCELLANEOUS

35 For protection of Environment Agency

The following provisions of this section shall, unless otherwise agreed in writing between the Authorities and the Agency, have effect:—

(1) In this section—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and, in relation to temporary works, removal;

“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 any appliance, constructed or used for defence against water;

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

“relevant work” means so much of any permanent or temporary work or operation authorised by this Act (other than works required in an emergency) as is likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work; or

(b) affect the purity or quality of water in any watercourse;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer:

(2) (a) Before beginning to construct any relevant work, the Authorities shall submit to the Agency plans of the work and such further particulars available to them as the Agency may within 14 days of the submission of the plans reasonably require;

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- (b) Any such relevant work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph (14) below;
 - (c) Any approval of the Agency 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 within 56 days of the submission of the plans for approval; and
 - (iii) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or for the protection of water resources, or for the prevention of flooding or pollution:
- (3) The requirements which the Agency may make under paragraph (2) above include conditions requiring the Authorities at their own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—
- (a) to safeguard any drainage work against damage; or
 - (b) 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 relevant work:
- (4) Any relevant work, and all protective works required by the Agency under paragraph (2) above, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works:
- (5) The Authorities shall give to the Agency not less than 14 days' notice in writing of their intention to commence construction of any relevant work and notice in writing of its completion not later than 7 days after the date on which it is brought into use:
- (6)
- (a) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this section, the Agency may by notice in writing require the Authorities at the Authorities' own expense to comply with the requirements of this section or (if the Authorities so elect and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires;
 - (b) Subject to sub-paragraph (c) below, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (a) above is served upon the Authorities, they have failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Authorities;
 - (c) In the event of any dispute as to whether sub-paragraph (a) above is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (b) above until the dispute has been finally determined:
- (7)
- (a) Any work constructed under this Act for the purpose of providing a flood defence shall be maintained to the reasonable satisfaction of the Agency by the person who has control of the work;

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- (b) If any such work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require that person to repair and restore the work, or any part thereof, or (if the person having control of the work so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires;
 - (c) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (b) above on the person who has control of that work, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover an expenditure reasonably incurred by it in so doing from that person;
 - (d) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (b) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers of sub-paragraph (c) above until the dispute has been finally determined:
- (8) If by reason of the construction of any relevant work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, so as to require remedial action, such impairment or damage shall be made good by the Authorities to the reasonable satisfaction of the Agency and if the Authorities fail to do so, the Agency may make good the same and recover from the Authorities the expense reasonable incurred by it in so doing;
- (9) The Authorities shall indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—
 - (a) in the examination or approval of plans under this section;
 - (b) in the inspection of the construction of the relevant works or any protective works required by the Agency under this section:
- (10) (a) The Authorities shall indemnify the Agency from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from the Agency by reason of—
 - (i) any damage to any drainage work so as to impair its efficiency for flood defence purposes;
 - (ii) any raising or lowering 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 lands;which is caused by the construction of any relevant work or any act or omission of the Authorities, their contractors, agents or employees whilst engaged upon the work;
- (b) The Agency shall give to the Authorities reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the Authorities;
- (11) Nothing in paragraph (10) above shall require the Authorities to indemnify the Agency in respect of any claim, demand, proceedings or damages which the Agency could reasonably make, take against or recover from any other person:

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- (12) 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 Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Authorities from any liability under the provisions of this section:

Provided that this paragraph shall not apply to the extent that such liability arises from a failure by the Agency properly to perform its functions:

- (13) For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under watercourses) as applying to the construction of the works, any consent or approval given or deemed to be given by the Agency under this section with respect to such construction shall be deemed also to constitute a consent or approval under that section:
- (14) Any dispute arising between the Authorities and the Agency under this section (other than a difference as to its meaning or construction) shall be determined by arbitration.