

SCHEDULES

SCHEDULE 10

PROTECTION OF CERTAIN PERSONS

PART 3

PROTECTION OF THE PORT OF TYNE AUTHORITY

16. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of Tyne Authority, have effect for the protection of the Port Authority.

17. The undertaker may with the written consent of the Port Authority deviate upwards from the levels shown on the deposited sections to such extent as may be indicated in that consent.

18. Before commencing a tidal work or a part of a tidal work the undertaker shall submit plans thereof to the Port Authority for their approval (which approval shall not be unreasonably withheld but may be given subject to reasonable conditions) and shall not commence the same until such plans have been approved by the Port Authority: but if the Port Authority do not within 42 days after the receipt of any such plans notify to the undertaker their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved them.

- (a) (a) Subject to the provisions of this Part of this Schedule, a tidal work shall not be constructed or carried out except in accordance with such plans as may be so approved or deemed to be approved by the Port Authority or determined by arbitration or in such other manner as may be agreed, and in accordance with any reasonable conditions subject to which approval is so given or determined and to the reasonable satisfaction of the Port Authority.
- (b) A tidal work shall be so constructed and thereafter maintained as to ensure that the traffic on the river is not interfered with except with the written approval of the Port Authority (which consent shall not be unreasonably withheld but may be given subject to reasonable conditions) and in any event no more than is reasonably necessary for the construction or maintenance of a tidal work; and, subject to the foregoing, that at all times during construction of the tidal works an unobstructed main navigation channel within the tunnel area for the safe passage of vessels is maintained and kept dredged by the undertaker to such depth as the Port Authority may reasonably require and to a width of not less than 60 metres.

20. The undertaker shall allow the authorised representatives of the Port Authority to inspect and survey all or any of the tidal works on reasonable written notice (or such notice as may be practicable in case of emergency) in that behalf being given to the undertaker by the Port Authority, and shall give all reasonable facilities for so doing.

21. Nothing in this Order shall authorise or empower the undertaker without the previous written consent of the Port Authority (which consent shall not be unreasonably withheld but may be given subject to reasonable conditions), to embank, encroach upon or interfere with any part of the bed, shores or banks of the river except as is expressly authorised by this Order or authorised by the Port Authority pursuant to paragraphs 18 and 19.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

22. Except so far as may be unavoidable in the construction of a tidal work, the undertaker shall not, without the written consent of the Port Authority (which consent shall not be unreasonably delayed or withheld), deposit or permit the deposit of any material on or in the river or on the bed, shores or banks of the river; and the undertaker shall within 7 days after receipt of written notice to that effect from the Port Authority remove any material so unavoidably deposited without the written consent of the Port Authority under paragraphs 18 and 19, as in the reasonable opinion of the Port Authority is necessary for facilitating or preserving safety of navigation.

23. The undertaker shall not, except for the purpose of constructing the authorised works, remove any gravel, soil or other material from the bed, shores or banks of the river without the previous written consent of the Port Authority (which consent shall not be unreasonably delayed or withheld), but nothing in this paragraph shall prevent the use by the undertaker of any gravel, soil or other material so removed for the purposes of the construction of other authorised works.

24. From the time when the construction of the tidal works is commenced the undertaker shall proceed with such works with all reasonable diligence and without unreasonable delay until all of the tidal works are completed and all temporary works removed from the river.

- (a) (a) The undertaker shall consult with the Port Authority as to any pile, stump or other obstruction in the river which becomes exposed in consequence of the tidal works and shall forthwith remove from the river any such pile, stump or other obstruction which in the reasonable opinion of the Port Authority is a hazard to navigation or, if it is not reasonably practicable to remove it, the same shall be cut off at such level below the maximum dredged depth of the bed of the river as the Port Authority acting reasonably and without delay may from time to time approve (not being more than two metres below that depth in the main navigation channel or one metre so below elsewhere in the river).
- (b) If the undertaker fails to remove from the river any such pile, stump or other obstruction within 7 days after receipt of written notice from the Port Authority requiring the removal, the Port Authority may with all reasonable diligence and without unreasonable delay carry out the removal and recover their reasonable expenses from the undertaker.

26. The undertaker shall, at or near every tidal work exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Port Authority may from time to time reasonably require.

27. If, except in the case of the new tunnel—

- (a) any tidal work is abandoned or out of repair or is in such other position that it is or is likely to become a danger to or (save as this Order may permit) interfere with navigation or other public rights in the river; and
- (b) the Port Authority by written notice require the undertaker to repair the tidal work or (if the undertaker no longer requires the work) to abate and remove the tidal work or any part of it and restore the site to its former condition; and
- (c) the undertaker fails to comply with the notice within 28 days after the receipt of it;

the Port Authority may abate and remove the work or any part of it and restore the site to its former condition and may recover their reasonable expenses from the undertaker.

28. Subject to paragraph 40 and to complying with paragraph 41, the Port Authority may recover from the undertaker any reasonable expenses howsoever caused (including a proper proportion of the overhead charges of the Port Authority) which the Port Authority incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work;

- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of the Port Authority to protect river users and other works in the river from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of the Port Authority may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river)—
 - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as the Port Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and
 - (ii) where the Port Authority have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid; and
- (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by the Port Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure;

and subject as aforesaid the undertaker shall indemnify the Port Authority from and against all claims and demands arising out of such construction or carrying out, failure or act or omission as aforesaid; but the Port Authority shall as soon as reasonably practicable give to the undertaker notice of any claim or demand which is one for which the undertaker 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 undertaker.

29. Nothing in this Order authorises the doing of anything prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹⁾ (offences of polluting controlled waters).

30. The Port Authority shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to the new tunnel or to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of the Port Authority or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof; and it shall be a defence to any proceedings for an offence under article 38 of this Order arising from the carrying out of such dredging or other operations or works by the Port Authority that the same were reasonably necessary and carried out without negligence.

31. After the purpose of any temporary tidal work has been accomplished or after a reasonable period of notice in writing from the Port Authority requiring it so to do, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, the Port Authority may remove the same and charge the undertaker with the reasonable expense of so doing, which expense the undertaker shall repay to the Port Authority.

32. If during the construction of a tidal work or within 10 years after the completion of that work and as a consequence whether in whole or in part of its construction, there is caused or created an

(1) 1991 c. 57.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

accumulation or erosion, the undertaker, if so requested by the Port Authority before or within the period of 10 years after such completion, shall remedy such accumulation or erosion in the manner specified in paragraph 34 and, if it refuses or fails so to do, the Port Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the undertaker to the extent that the same is attributable to such construction as aforesaid.

33. Should any such accumulation or erosion as is mentioned in paragraph 32 arise within the period of 10 years mentioned in that paragraph and be remedied in accordance with paragraph 34, any recurrence of such accumulation or erosion shall from time to time be so remedied by the undertaker during that period of 10 years and at any time thereafter, save that the undertaker's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

34. For the purpose of paragraphs 32 and 33—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably necessary.

35. In the event it is established that any accumulation or erosion mentioned in paragraph 32 or 33 would have been caused in any event by factors other than the construction of a tidal work, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

36. For the purposes of paragraph 32 the date of completion of a tidal work shall be the date on which it is brought into use.

37. The undertaker shall—

- (a) pay to the Port Authority the reasonable costs incurred by the Port Authority 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;
- (b) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by the Port Authority and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and
- (c) afford to the Port Authority such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

38. Nothing in this Part of this Schedule shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands of the Port Authority or for which the Port Authority may be liable above are attributable to negligence or breach of statutory duty on the part of the Port Authority or any act or omission by it of any person in their employ or of their contractors or agents.

39. The Port Authority shall give to the undertaker notice of any claim or demand in relation to which the undertaker may be liable under this Part of this Schedule and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker which if it withholds such consent shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

40. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any reasonable conditions or restrictions prescribed by the Port Authority or in accordance with plans approved or deemed to be approved by the Port Authority or to their 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 undertaker from any liability under the provisions of this Part of this Schedule save where any such liability arises by reason of any conditions or restrictions imposed by the Port Authority.

41. With the exception of any duty owed by the Port Authority to the undertaker which is expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order shall be construed as imposing upon the Port Authority either directly or indirectly, any duty or liability to which the Port Authority would not otherwise be subject and which is enforceable by proceedings before any court.

42. Save as the terms of this Order may otherwise provide nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Port Authority or the harbour master at the date of making of this Order but so that it shall not be necessary for the undertaker to obtain any other consent from the Port Authority unless this Part of this Schedule so provides.

43. Unless otherwise agreed in writing, any difference which may arise between the undertaker and the Port Authority under this Part of this Schedule (other than under paragraphs 21 and 42 or a difference as to the meaning or construction of this Part of this Schedule) shall be settled by arbitration in accordance with article 54 of this Order.

44. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, improvement, enlargement, relaying and renewal and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or other structure of whatever nature;

“plans” includes arrangements, sections, descriptions, drawings and specifications;

“the river” means the River Tyne; and

“tidal work” means so much of any temporary or permanent work authorised by this Order (which includes the demolition of any structure, any removal of gravel or other material, any dredging or similar work, and any geotechnical investigations that may be undertaken) as is in, on, under or over—

- (a) the surface of land below the level of high water spring tides forming part of the river; or
- (b) any land owned, occupied or used by the Port Authority for operational purposes.