

## SCHEDULES

### SCHEDULE 6

Article 45

#### PROTECTION OF CERTAIN PERSONS

#### PART 1

#### PROVISIONS FOR THE PROTECTION OF THE PORT AUTHORITY

##### *Interpretation*

1.—(1) For the protection of the Port Authority, the provisions in this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Port Authority, have effect.

(2) In this Part—

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

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

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

“plans” includes arrangements, sections, descriptions, outline design and construction drawings and such specifications and other appropriate documents (including so far as is reasonably practicable a programme of the times at which it is intended that significant operations will be carried out) as may be reasonably necessary to give the Port Authority an understanding of the Council’s intentions in connection with constructional operations which will or may have a significant effect on navigation in, or the flow or regime of, the Ouseburn and, where applicable such relevant hydraulic information about the Ouseburn, including that obtained from models, as may be available to the Council and is not already in the possession of the Port Authority; and

“protective works” means such works by the Council, at their own expense, as may be specified by the Port Authority for the protection of traffic in, or the flow or regime of, the Ouseburn.

(3) With the exception of any duty owed by the Port Authority to the Council which is expressly provided for in this Part, 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.

(4) Except as otherwise expressly provided in this Order and except so far as may be necessary to enable the objects of this Order to be effected, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Port Authority or harbour master or alter or diminish any power, authority or jurisdiction vested in the Port Authority on the date that this Order comes into force.

*Status: This is the original version (as it was originally made).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

*Works in the upstream Ouseburn*

2.—(1) Not later than 28 days before—

- (a) starting to carry out any tidal works; or
- (b) exercising any of the powers of article 9 (power to dredge etc.),

the Council shall submit to the Port Authority plans thereof and such further particulars as may be available to the Council and as the Port Authority may reasonably require and in carrying out such works or in exercising such powers, the Council shall comply with all reasonable modifications and conditions (not involving alteration to the basic design of any tidal works) required by the Port Authority, including protective works.

(2) Any modifications or conditions referred to in sub-paragraph (1) shall be notified by the Port Authority to the Council within 28 days of the receipt by the Port Authority of the plans or particulars to which such modifications or conditions relate.

*Removal of temporary works*

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

*Facilities for navigation*

4.—(1) The Council shall 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 Ouseburn as may be necessary during or in consequence of the construction of a tidal work.

(2) The Council shall 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.

*Details to be submitted to Port Authority*

5. On completion of the construction of the scheduled works the Council shall supply to the Port Authority a plan on a scale of not less than 1 to 2500 and sections and cross-sections on a scale of not less than 1 to 100 showing the situation and levels of those works at that time.

*Survey of the bed of the Ouseburn*

6.—(1) Before the construction of the scheduled works is commenced, the Port Authority in conjunction with the Council shall carry out a survey of such parts of the Ouseburn as are relevant for the purpose of establishing the condition of the Ouseburn at that time.

(2) The Port Authority will make available to the Council, at reasonable charge, the results of the survey carried out under this paragraph.

*Remedy in case of accumulation or erosion*

7.—(1) If, during the construction of a tidal work or within 10 years after the relevant date it is agreed between the Council and the Port Authority after taking into account any relevant data or circumstances, or in default of agreement it is determined in pursuance of a reference to arbitration by the Council or the Port Authority under article 54 (arbitration), that—

- (a) any part of the Ouseburn has been subjected to accumulation or erosion;
- (b) such accumulation or erosion is as a consequence (whether in whole or in part) of the construction of the tidal works; and
- (c) for the safety of navigation or in the interests of persons using the Ouseburn or for the protection of works in the Ouseburn, such accumulation or erosion should be removed or, as the case may be, made good,

the Council, if so requested by the Port Authority before, or within the period of 10 years after, the relevant date, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) 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 Council.

(2) Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in sub-paragraph (1) and be remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Council during that period of 10 years and at any time thereafter, save that the Council'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.

(3) For the purpose of sub-paragraph (1)—

- (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 necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to sub-paragraph 8(1)(a) or (b) establish that any accumulation or erosion mentioned in sub-paragraph (1) or (2) would have been caused in any event by factors other than the construction of the tidal work, the Council shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

(5) For the purposes of sub-paragraph (1), “the relevant date” means, in relation to the scheduled works and any other tidal work executed in connection therewith or incidental thereto, the date on which it is certified by the Engineer of the Council that the scheduled works are substantially complete and the lock gates are capable of being closed.

(6) The Council and the Port Authority shall consult the Environment Agency in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 13.

*Further protection for the Port Authority*

8.—(1) Without prejudice to the other provisions of this Part, the Council shall be responsible for, and make good to the Port Authority, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of the Port Authority) which may reasonably be incurred by or occasioned to the Port Authority by reason of—

- (a) the inspection of any of the tidal works by the Port Authority or their duly authorised representative;

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

- (b) the survey, inspection, testing and sampling of the Ouseburn by the Port Authority—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works 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 Council is liable to remedy under this Part; and
  - (ii) where the Port Authority have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (c) the construction of any of the tidal works or the failure of any of the tidal works 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 construction or failure; and
- (d) any act or omission of the Council or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

(2) Without prejudice to the generality of sub-paragraph (1), the Council shall indemnify the Port Authority from and against all claims and demands arising out of, or in connection with, such construction, failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph shall impose any liability on the Council to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) and (2) are attributable to negligence on the part of the Port Authority or of any person in their employ or of their contractors or agents.

(4) The Port Authority shall give to the Council notice of any claim or demand in relation to which the Council may be liable under this Part and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Council.

#### *Liability of the Council*

9. The fact that any work or thing has been executed or done with the consent of the Port Authority and in accordance with any conditions or restrictions prescribed by the Port Authority or in accordance with plans submitted to 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 Council from any liability under the provisions of this Part.

## PART 2

### PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

#### *Interpretation*

10.—(1) For the protection of the Environment Agency the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Environment Agency, have effect.

(2) In this Part—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

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

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or banks of the Ouseburn or the River Tyne;

“the fishery” means any waters containing fish and fish in, or migrating to or from, the River Tyne or the Ouseburn and the spawn, habitat or food of such fish;

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

“specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (iii) cause obstruction to the free passage of fish or damage to any fishery; or
- (iv) affect the conservation, distribution or use of water resources; and

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

### *Approval of plans*

**11.**—(1) Before beginning to construct any specified work, the Council shall submit to the Environment Agency plans of the work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Without prejudice to sub-paragraph (1) above, the Council shall secure and provide the Environment Agency with all necessary hydraulic and other information necessary to identify and quantify potential effects of construction, maintenance and operation of any specified work upon flood defence and such information shall be accompanied by an assessment of the likely effects and of any remedial measures necessary to address them.

(3) No specified work shall be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 19.

(4) Any approval of the Environment Agency required under this Part—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing (and in the case of a refusal accompanied by a statement of the grounds for refusal) within 2 months of the submission of plans for approval; and
- (c) may be given subject to such reasonable requirements as the Environment Agency may impose in the discharge of its environmental and recreational duties for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution.

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

*Conditions relating to works*

12.—(1) Without prejudice to the generality of sub-paragraph 11(4), the requirements which the Environment Agency may impose under that sub-paragraph include—

- (a) conditions as to the time and the manner in which any work or operation is to be carried out;
- (b) conditions requiring the Council at its own expense—
  - (i) to provide or maintain means of access for the Environment Agency;
  - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;
  - (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction or following the completion of the specified works; and
  - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

(2) Any specified work, and all protective works required by the Environment Agency under sub-paragraph (1)(b)(ii), shall be constructed—

- (a) within such period (if any) as the Environment Agency may specify at the time of approval or upon an application by the Council thereafter (such approval not to be unreasonably withheld);
- (b) in accordance with plans approved or deemed to have been approved or settled under this Part; and
- (c) to the reasonable satisfaction of the Environment Agency,

and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(3) The Council shall give to the Environment Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(4) 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 Part, the Environment Agency may by notice in writing require the Council, at the Council's own expense, to comply with the requirements of this Part or (if the Council so elects and the Environment 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 as the Environment Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the Council, it has failed to begin taking steps to comply with the requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Council.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Environment Agency shall not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

### *Accumulation and erosion*

13.—(1) If, during the construction of any specified work, or within 10 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow in the Ouseburn or the River Tyne which adversely affects flood flows or drainage, which is reasonably attributable to the construction, maintenance or operation of such work, the Council shall, if so required by the Environment Agency before, or within the period of 10 years after, such completion and to the extent that it is so attributable, remedy such accumulation or erosion or the effects of such alteration to tidal flow in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, the Environment Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the Council.

(2) Should any accumulation or erosion or effect of an alteration to tidal flow arise which adversely affects flood flows or drainage in consequence of such construction, maintenance or operation within the said period of 10 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion or effect of an alteration of tidal flow shall, from time to time and to the extent that any accumulation or erosion or effect of an alteration of tidal flow adversely affects flood flows or drainage and is reasonably attributable to the construction, maintenance or operation of any specified work, be so remedied by the Council during the said period of 10 years and at any time thereafter, save that the Council's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or effect of alteration of tidal flow a period of 10 years elapses without any further accumulation or erosion or effect of alteration of tidal flow.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may reasonably be required by the Environment Agency;
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and protective measures as may be reasonably required by the Environment Agency; and
- (c) in the case of the effects of alteration of tidal flow, the remedy shall be the carrying out of such works and measures as may be reasonably required by the Environment Agency in order to avoid a recurrence of such effects.

(4) To the extent that the Council establishes by surveys, inspections, tests or sampling that such accumulation or erosion or effect of alteration of tidal flow would have been caused in any event by factors other than the construction, maintenance or operation of a specified work the Council shall not be liable to remedy such accumulation or erosion or effect of alteration of tidal flow.

(5) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (4) the Council shall not unreasonably delay the execution of any remedial action required under sub-paragraphs (1) or (2).

(6) The impoundment or release of water by means of the scheduled works shall not of themselves be an effect of alteration of tidal flow for the purposes of this paragraph.

(7) The Council and the Environment Agency shall consult the Port Authority in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 7.

### *Repair of specified works*

14.—(1) Before commencing the construction of a specified work the Council shall procure at its expense in liaison with and to the reasonable satisfaction of the Environment Agency a survey of any drainage work liable to be affected by that specified work.

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

(2) The Council shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land owned by the Council or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(3) The obligation imposed on the Council under sub-paragraph (2) does not apply where the Environment Agency or another person is liable to maintain any such drainage work and is not precluded from doing so by the exercise by the Council of the powers conferred by this Order.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the Council at the Council's own expense to repair and restore the drainage work, or any part thereof, or (if the Council so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the drainage work and restore the site to its former condition, to such extent and within such limits as the Environment Agency reasonably requires.

(5) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (4) on the Council, the Council has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Council.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Environment Agency shall not, except in a case of an emergency, exercise the powers of sub-paragraph (5) until the dispute has been finally determined.

**15.** If by reason of any specified work or by reason of the failure of any such work or of the Council to maintain it, the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the Council to the reasonable satisfaction of the Environment Agency and if the Council fails to do so within such reasonable period as the Environment Agency may require by notice in writing to the Council, the Environment Agency may make good the same and recover from the Council any expenditure reasonably incurred by it in so doing.

#### *Protection of fishery*

**16.—(1)** Without prejudice to the other provisions of this Part, the Council shall take all such measures as may be reasonably practicable to prevent any interruption in the passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of such work,

damage is caused to the fishery, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the Council requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the Council any expenditure reasonably incurred by it in so doing.



(4) In any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment Agency may take such steps as are reasonable for the purpose, and may recover from the Council the reasonable cost of so doing provided that a notice specifying those steps is served on the Council as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

#### *Indemnities*

17.—(1) The Council shall indemnify the Environment Agency in respect of all reasonable and proper costs incurred, charges paid and expenses met by the Environment Agency—

- (a) in the examination or approval of plans under this Part; or
- (b) in the inspection of the construction of the specified works or any protective works required by the Environment Agency under this Part.

(2) Without prejudice to the other provisions of this Part, the Council shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Environment Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Council, its contractors, agents, workmen or servants whilst engaged upon any such work.

(3) The Environment Agency shall give to the Council reasonable notice of any such claim or demand and no compromise or settlement thereof shall be made without the agreement of the Council which agreement shall not be unreasonably withheld.

(4) Prior to incurring any expense which it may seek to recover under this paragraph, the Environment Agency shall, except in a case of urgency, serve notice on the Council informing it of the Environment Agency's intentions and requiring it within such time as the Environment Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Environment Agency to incur such costs.

(5) Nothing in this part of this schedule shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the negligent act or omission of the Environment Agency, its officers, servants or, if not the Council, its contractors or agents.

#### *Deemed consents*

18. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991(1) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Part with respect to such construction shall be deemed

---

(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.*

also to constitute an impounding licence under that Chapter or, as the case may be, consent or an approval under that section.

#### *Disputes*

19. Any dispute arising between the Council and the Environment Agency under this Part shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs.

### PART 3

#### PROVISIONS FOR THE PROTECTION OF NORTHUMBRIAN WATER

##### *Outfall surveys and remedial works*

20. For the protection of Northumbrian Water the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and Northumbrian Water, have effect.

21.—(1) In this Part—

“outfall survey” means a survey conducted by the Council or Northumbrian Water of—

- (a) the level of siltation within the outlet into the Ouseburn of a relevant outfall;
- (b) the level of siltation at the points on the bed of the Ouseburn to be agreed between the Council and Northumbrian Water in the vicinity of any relevant outfall; and
- (c) the condition of the relevant outfall; and

“relevant outfall” means a sewerage outfall system into the Ouseburn identified by Northumbrian Water as requiring survey on account of existing or likely siltation.

(2) Prior to the commencement of the scheduled works, the Council shall ask Northumbrian Water to identify relevant outfalls which, following reasonable agreement by the Council, shall be made subject to an outfall survey by the Council.

(3) The Council shall consult Northumbrian Water as to the method and timing of any outfall survey and the Council shall provide a copy of the survey results to Northumbrian Water within 28 days of the survey being completed.

- (a) (4) (a) The Council shall monitor the level of the bed of the Ouseburn in the vicinity of each relevant outfall in accordance with a survey timetable agreed or required by Northumbrian Water and shall provide Northumbrian Water with the results of such monitoring;
- (b) Should the results of such monitoring reveal siltation in the vicinity of any relevant outfall Northumbrian Water may require an outfall survey of such outfall.

(5) Should any relevant outfall or the bed of the Ouseburn in the vicinity of such outfall be subject to siltation to a significantly greater depth than identified in any outfall survey undertaken in accordance with sub-paragraph (2), to the extent that the performance of the outfall is significantly prejudiced and provided that the siltation is largely or completely due to the construction or operation of the scheduled works, then Northumbrian Water may either require the Council to clear the area concerned or undertake the work itself.

(6) The cost of any work done in accordance with sub-paragraph (5) shall be borne by the Council to the extent that the siltation requiring clearance has been caused by the construction or operation of the scheduled works but otherwise the said cost shall be borne by Northumbrian Water and should

the said work be required partly on account of the scheduled works and partly by other causes the costs of such work shall be apportioned between the Council and Northumbrian Water.

#### *Indemnity*

**22.**—(1) The Council shall be responsible for and make good to Northumbrian Water all reasonable costs, charges, damages and expenses which may be caused to or incurred by Northumbrian Water by reason of the construction or operation of the scheduled works.

(2) The Council shall indemnify Northumbrian Water from and against all claims arising out of or in connection with the construction or operation of the scheduled works.

(3) Northumbrian Water shall give to the Council reasonable notice of any such claim or demand referred to in sub-paragraph (2) and no settlement or compromise thereof shall be made without the prior consent of the Council.

### PART 4

#### PROVISIONS FOR THE PROTECTION OF THE PORT HEALTH AUTHORITY

**23.** Nothing in this Order shall prejudice, alter, affect or interfere with the functions, rights, liabilities, jurisdiction or authority of the Port Health Authority.

**24.** Not later than 28 days before—

- (a) starting to carry out any tidal work; or
- (b) exercising any of the powers conferred by article 9 (power to dredge etc.),

the Council shall submit to the Port Health Authority plans thereof and such further particulars as may be available to the Council and as the Port Health Authority may reasonably require in respect of carrying out such works or in exercising such powers.

### PART 5

#### PROVISIONS FOR THE PROTECTION OF THOSE WITH AN INTEREST IN NAVIGATION IN THE OUSEBURN OR THE ENVIRONMENT AND AMENITIES OF THE OUSEBURN

**25.** The Council shall, prior to the commencement of the scheduled works, establish a consultative body to be known as the Ouseburn River Users Committee which the Council shall, except where it is not reasonably practicable to do so, consult on all matters substantially affecting the operation of the scheduled works, the navigation in the Ouseburn, and the environment and amenities of the Ouseburn.

**26.** The consultative body may meet at such times as it may decide, and shall meet during its first 5 years not less than twice a year, and subsequently not less than once a year.

**27.** The Council shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the consultative body whether or not the consultative body has been consulted by the Council on the matter, recommendation or representation so referred or made.

**28.** If the Council determines not to follow any advice or recommendation given to it by the consultative body, it shall give to the consultative body reasons for not doing so.

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

**29.** The consultative body established pursuant to this article shall consist of a person appointed by the Royal Yachting Association and such other persons appointed by the Council as the Council shall from time to time consider appropriate.

**30.** Subject to paragraph 29, appointments to the consultative body established under this Part shall be made by the Council in accordance with a scheme prepared by them for that purpose and the scheme shall provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in, or representing persons or bodies with an interest in—

- (a) the navigation in the Ouseburn; or
- (b) the environment and amenities of the Ouseburn.

**31.** The Council shall provide reasonable accommodation for the meetings of the consultative body on not less than 6 occasions in any 12 month period during its first 5 years and subsequently on not less than 4 occasions in any 12 month period if so required by the consultative body and shall provide reasonable secretarial services for the consultative body.

**32.** The consultative body may determine its own quorum and procedure and shall appoint a chairman.

**33.** An individual member of the consultative body may, on giving notice in writing to the chairman of that body, send a substitute to any meeting of the consultative body.

**34.** A member of the consultative body shall hold office for the period of 3 years from the date of his appointment and at the end of his period shall be eligible for reappointment.

**35.** A member of the consultative body may resign his office at any time by notice in writing given to the chairman of the body who shall send a copy of the notice to the Council.

**36.** This Part shall cease to have effect in the event that the scheduled works are removed from the Ouseburn.