

## SCHEDULES

### SCHEDULE 8

Article 61

#### FOR THE PROTECTION OF THE PORT OF LONDON AUTHORITY

##### *General*

1.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the Harbour Authority and the PLA, have effect for the protection of the PLA and the users of the river.

(2) For the purposes of this Schedule, the definition of “tidal work” shall be taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the PLA, whether or not that authorised work is within the PLA limits,

but shall not include any maintenance dredging.

##### **Commencement Information**

**II** Sch. 8 para. 1 in force at 16.5.2008, see [art. 1](#)

##### *Tidal Works: approval of detailed design*

2.—(1) Before—

- (a) submitting any plans and sections for any tidal work to the Secretary of State for her approval under article 16 (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work where approval of the Secretary of State under article 16 (tidal works not to be constructed without approval of the Secretary of State) is not required; or
- (c) commencing any operation for the maintenance of a tidal work,

the Harbour Authority shall submit to the PLA plans and sections of the tidal work or operation and such further particulars as the PLA may, within 28 days from the day on which the plans and sections are submitted under this sub-paragraph, reasonably require.

(2) No application for the Secretary of State’s approval under article 16 (tidal works not to be constructed without approval of the Secretary of State) shall be made in respect of a tidal work until plans and sections in respect of that tidal work submitted under sub-paragraph (1) have been approved by the PLA.

(3) Any tidal work not requiring the Secretary of State’s approval under article 16 (tidal works not to be constructed without approval of the Secretary of State) shall not be constructed, and no tidal work shall be maintained, except in accordance with such plans as may be approved in writing by the PLA or determined under paragraph 24.

(4) Any approval of the PLA required under this paragraph shall not be unreasonably withheld but may be given subject to such reasonable requirements as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(5) Requirements made under sub-paragraph (4) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the Harbour Authority does not commence construction of the tidal work approved within a prescribed period.

(6) Subject to sub-paragraphs (8) and (9), any such approval shall be deemed to have been refused if it is neither given nor refused within 42 days of the specified day.

(7) Before making a decision on any such approval, the PLA shall take into account any opinion on the plans and sections provided to it by the Environment Agency.

(8) Accordingly, an approval of the PLA under this paragraph shall not be deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (6) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged in the proper exercise of its functions to carry out provided that during the course of such consultation, the PLA has acted with all due expedition.

(9) In this paragraph “the specified day” means, in relation to any tidal work—

- (a) the day on which plans of that work are submitted to the PLA under sub-paragraph (1); or
- (b) the day on which the Harbour Authority provides the PLA with all such particulars of the work as have been requested by the PLA under that sub-paragraph;

whichever is the later.

(10) Whenever the Harbour Authority provides the Secretary of State with an environmental document it shall at the same time send a copy to the PLA.

**Commencement Information**

**I2** Sch. 8 para. 2 in force at 16.5.2008, see [art. 1](#)

**3.** Subject to paragraph 21, no tidal work shall be subject to any of the controls in sections 66 to 75 of the 1968 Act.

**Commencement Information**

**I3** Sch. 8 para. 3 in force at 16.5.2008, see [art. 1](#)

**4.** Any operations for the construction of any tidal work approved in accordance with this Order shall, once commenced, be carried out by the Harbour Authority with all reasonable dispatch and to the reasonable satisfaction of the PLA so that river traffic, the flow or regime of the river and the exercise of the PLA’s functions shall not suffer more interference than is reasonably practicable, and the PLA shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

**Commencement Information**

**14** Sch. 8 para. 4 in force at 16.5.2008, see [art. 1](#)

*Discharges, etc.*

5.—(1) The Harbour Authority shall not without the consent of the PLA—

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the river.

(2) Any consent of the PLA under this paragraph shall not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(3) Any such approval shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 54 (power to discharge surface water into the river) shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.

**Commencement Information**

**15** Sch. 8 para. 5 in force at 16.5.2008, see [art. 1](#)

6. The Harbour Authority shall not, in exercise of the powers conferred by article 54 (power to discharge surface water into the river), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the PLA.

**Commencement Information**

**16** Sch. 8 para. 6 in force at 16.5.2008, see [art. 1](#)

*Obstruction in river*

7. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Harbour Authority shall, as soon as reasonably practicable after the receipt of notice in writing from the PLA requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut the obstruction off at such level below the bed of the river as the PLA may reasonably direct; or
- (b) take such other steps to make the obstruction safe as the PLA may reasonably require.

**Commencement Information**

**17** Sch. 8 para. 7 in force at 16.5.2008, see [art. 1](#)

*Removal, etc. of PLA moorings and buoys*

**8.** If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the PLA to incur costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the PLA, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) the PLA gives to the Harbour Authority not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Harbour Authority may make in response to the notice within 14 days of the receipt of the notice,

the Harbour Authority shall pay the costs reasonably so incurred by the PLA.

**Commencement Information**

**18** Sch. 8 para. 8 in force at 16.5.2008, see [art. 1](#)

*Navigational lights, buoys, etc.*

**9.** In addition to any requirement under article 18 (lights on tidal works, etc.), the Harbour Authority shall, at or near every tidal work, and any other work of which the Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high water level forming part of the river), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

**Commencement Information**

**19** Sch. 8 para. 9 in force at 16.5.2008, see [art. 1](#)

*Removal of temporary works*

**10.** On completion of the construction of any part of a permanent authorised work, the Harbour Authority shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and shall make good the site to the reasonable satisfaction of the PLA.

**Commencement Information**

**110** Sch. 8 para. 10 in force at 16.5.2008, see [art. 1](#)

*Protective action*

**11.**—(1) If any tidal work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given pursuant to paragraph 2(4); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the PLA may by notice in writing require the Harbour Authority at the Harbour Authority's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Schedule; or
  - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the Harbour Authority does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require the Harbour Authority to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
- (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the Harbour Authority shall, in compliance with its duties under any enactment and, in particular, under section 48A of the 1964 Act, take such action as is necessary to prevent or mitigate those environmental impacts and in so doing shall consult and seek to agree the necessary measures with the PLA.

(5) If the PLA becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the PLA shall notify the Harbour Authority of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the tidal work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. The Harbour Authority shall implement the measures that the PLA has notified to the Harbour Authority or shall implement such other measures as the Harbour Authority believes are necessary to counter the environmental impact identified, giving reasons to the PLA as to why it has implemented such other measures.

**Commencement Information**

**111** Sch. 8 para. 11 in force at 16.5.2008, see [art. 1](#)

*Abandoned or decayed works*

**12.**—(1) If any tidal work or any other work of which the Harbour Authority is in possession in exercise of any of the powers of this Order (being in either case a work which is below mean high

**Changes to legislation:** There are currently no known outstanding effects for the The London Gateway Port Harbour Empowerment Order 2008, SCHEDULE 8. (See end of Document for details)

water level) is abandoned or falls into decay, the PLA may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the PLA may by notice in writing require the Harbour Authority to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the Harbour Authority so elects, to remove the tidal work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the Harbour Authority has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the PLA may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Harbour Authority.

**Commencement Information**

**112** Sch. 8 para. 12 in force at 16.5.2008, see [art. 1](#)

*Facilities for navigation*

**13.**—(1) The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the PLA, and shall ensure that access to such aids remains available during and following construction of any tidal works.

(2) The Harbour Authority shall provide at any tidal works, or shall afford reasonable facilities at such works (including an electricity supply) for the PLA to provide at the Harbour Authority’s cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary by reason of the construction of any tidal works, and shall ensure that access remains available to apparatus during and following construction of such works.

(3) Without prejudice to section 133 of the 1968 Act (Lights detrimental to navigation), the Harbour Authority shall comply with the directions of the Harbour Master from time to time with regard to the lighting on the tidal works or within London Gateway Port, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river.

**Commencement Information**

**113** Sch. 8 para. 13 in force at 16.5.2008, see [art. 1](#)

*Survey of riverbed*

**14.**—(1) Before the commencement of construction of the first tidal work to be constructed following approval pursuant to article 16 (tidal works not to be constructed without approval of the Secretary of State), the PLA may, at the Harbour Authority’s expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action that might

result from the construction of such of the authorised works as would constitute tidal works if they were to be constructed, for the purposes of establishing the condition of the river at that time.

(2) Before the commencement of construction of any other tidal work approved pursuant to article 16 (tidal works not to be constructed without approval of the Secretary of State), the PLA may, at the Harbour Authority's expense, carry out a survey of such parts of the river as might be affected by sedimentation, scouring, currents or wave action resulting from that tidal work for the purpose of establishing the condition of the river at that time.

(3) The PLA may carry out such surveys of the river as are reasonably required during the construction of any tidal work to ascertain the effect of that tidal work on the river and the PLA shall make available to the Harbour Authority the results of any such survey.

(4) After completion of, respectively, any tidal work and all the tidal works constructed under this Order, the PLA may, at the Harbour Authority's expense carry out a further survey of the parts of the river which were surveyed prior to the construction of that work, or as the case may be a survey of the completed tidal works as so constructed, for the purpose of establishing the condition of the river and the effect that the tidal work is, or as the case may be the tidal works are, having on navigation, the flow and the regime of the river and the exercise of the PLA's functions.

(5) The PLA shall not under this paragraph carry out a survey of any part of the river as respects which the Harbour Authority has provided to the PLA survey material which the PLA is satisfied establishes the condition of the river, and in the case of a survey under sub-paragraph (3), the effect of the tidal work, or as the case may be the tidal works.

**Commencement Information**

**I14** Sch. 8 para. 14 in force at 16.5.2008, see [art. 1](#)

*Sedimentation, etc.: remedial action*

**15.**—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the PLA be removed or made good.

(2) The Harbour Authority shall either—

- (a) pay to the PLA any additional expense to which the PLA may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the PLA, such prior approval not to be unreasonably withheld or delayed;

and the expenses payable by the Harbour Authority under this paragraph include any additional expenses accrued or incurred by the PLA in carrying out surveys or studies in connection with the implementation of this paragraph.

**Commencement Information**

**I15** Sch. 8 para. 15 in force at 16.5.2008, see [art. 1](#)

### *Indemnity*

**16.—(1)** The Harbour Authority shall be responsible for and make good to the PLA all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by the PLA by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy pursuant to paragraph 8; or;
- (c) any act or omission of the Harbour Authority, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works;

and the Harbour Authority shall indemnify the PLA from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of the Harbour Authority; or
- (b) by the Harbour Authority, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative;

shall not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse the Harbour Authority from liability under the provisions of this paragraph.

(3) The PLA shall give the Harbour Authority reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand shall be made without the prior consent of the Harbour Authority.

#### **Commencement Information**

**116** Sch. 8 para. 16 in force at 16.5.2008, see [art. 1](#)

### *Dedication of land for conservation, etc.*

**17.—(1)** Before dedicating or designating any land under article 47 (conservation), the Harbour Authority shall provide the PLA with a plan of the land and full particulars of the use to which it is intended to be put, and shall provide such further particulars as the PLA may, within 21 days from the day on which the plan is submitted under this paragraph, reasonably require.

(2) The Harbour Authority shall not dedicate or designate any land under article 47 (conservation) except in accordance with such plans and particulars as may be approved by the PLA or determined under paragraph 24.

(3) Any approval of the PLA required under this paragraph shall not be unreasonably withheld but may be given subject to such reasonable requirements as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purpose of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection;

including conditions as to the proposed use of the land, its management and any environmental mitigation.



(4) Any such approval shall be deemed to have been refused if it is neither given nor refused within 35 days of the day on which the plans are submitted under sub-paragraph (1).

**Commencement Information**

**I17** Sch. 8 para. 17 in force at 16.5.2008, see [art. 1](#)

*Statutory functions*

**18.**—(1) Subject to article 4(3) and this paragraph, any function of the Harbour Authority or any officer of the Harbour Authority, whether conferred by or under this Order or any other enactment, shall be subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or its Harbour Master under any enactment; and
- (c) any other exercise by the PLA or its Harbour Master of any function conferred by or under any enactment.

(2) The Harbour Authority or Dockmaster shall not take any action in the river outside the area of jurisdiction under sections 57, 65 and 69 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) except with the consent of the Harbour Master, which shall not be unreasonably withheld.

(3) The Dockmaster shall not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847), if to do so would conflict with a special direction given to the same vessel by the Harbour Master.

(4) That part of the port premises not in the river shall not be “port premises” for the purposes of the 1968 Act.

(5) The PLA shall consult the Harbour Authority before making any byelaw under the 1968 Act which directly applies to or which could directly affect the construction, operation or maintenance of London Gateway Port or the port premises.

(6) The PLA or the Harbour Master (as appropriate) shall consult the Harbour Authority before giving any general direction under the 1968 Act which directly affects the construction, operation or maintenance of London Gateway Port or the port premises.

**Commencement Information**

**I18** Sch. 8 para. 18 in force at 16.5.2008, see [art. 1](#)

*Vesting of reclaimed river bed*

**19.**—(1) Section 72 of the 1968 Act (vesting of embanked land) shall apply so as—

- (a) to vest in the Harbour Authority any reclaimed land created by the construction of Works Nos. 11 and 12 (Sheets Nos. 216 and 217 of the deposited plans) on the completion by the PLA of a separate certificate relating to that land; and
- (b) to enable the PLA to issue one or more certificates, each relating to part only of the reclaimed land so created.

(2) The PLA shall not be required to issue a certificate under sub-paragraph (1) in relation to any part of Works Nos. 11 and 12 (Sheets Nos. 216 and 217 of the deposited plans) unless—

- (a) the average level of the reclaimed land the subject of the certificate is not less than 1 metre above mean high water level and no part of that land is below mean high water level;
- (b) the reclaimed land the subject of the certificate forms an identifiable section of the reclamation works by comprising reclaimed land surrounded by a bund which is connected to the river bank; and
- (c) the compensation payable in respect of that land in accordance with paragraph 20 has been paid to the PLA.

**Commencement Information**

**I19** Sch. 8 para. 19 in force at 16.5.2008, see [art. 1](#)

*Compensation for river bed*

**20.** Notwithstanding paragraph 3, and unless otherwise agreed in writing between the Harbour Authority and the PLA, compensation shall be payable to the PLA in respect of any tidal work (including any reclamation) and any rights required in connection with such tidal work as if the Harbour Authority had been required—

- (a) to obtain a licence for the work under section 66 (Licensing of works) of the 1968 Act; and
- (b) to pay consideration for the licence determined in accordance with the provisions of section 67 (Consideration for licence) of that Act;

and the PLA's costs incurred in connection with the determination of such compensation shall be recoverable from the Harbour Authority.

**Commencement Information**

**I20** Sch. 8 para. 20 in force at 16.5.2008, see [art. 1](#)

*Maintenance dredging*

**21.** For the avoidance of doubt, section 73 of the 1968 Act shall apply to any maintenance dredging carried out by the Harbour Authority.

**Commencement Information**

**I21** Sch. 8 para. 21 in force at 16.5.2008, see [art. 1](#)

*Consideration for dredged material*

**22.—(1)** The Harbour Authority shall pay to the PLA for material dredged by the Harbour Authority under this Order from so much of the river as is vested in the PLA consideration calculated at a rate agreed between them and otherwise in accordance with this paragraph.

(2) The Harbour Authority shall pay consideration under sub-paragraph (1) as respects material dredged in the course of the construction of the works authorised by article 13 (power to dredge) based on the quantity of such material that—

- (a) is not used for the construction of—
  - (i) the authorised works;
  - (ii) any other works related to the construction of London Gateway Port; or
  - (iii) the related development; and
- (b) is sold by the Harbour Authority or by any other person exercising any powers under this Order.

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**Commencement Information**

**I22** Sch. 8 para. 22 in force at 16.5.2008, see [art. 1](#)

*Removal of wrecks and obstructions, etc.*

**23.**—(1) Before exercising any power under section 252 of the Merchant Shipping Act 1995<sup>(1)</sup> or under section 56 of the 1847 Act, the Dockmaster shall notify the Harbour Master.

(2) The Dockmaster shall comply with any reasonable instructions that the Harbour Master may give in relation to the exercise of the powers referred to in sub-paragraph (1).

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**Commencement Information**

**I23** Sch. 8 para. 23 in force at 16.5.2008, see [art. 1](#)

*Disputes*

**24.** Any dispute arising between the Harbour Authority and the PLA under this Schedule shall be determined by arbitration as provided in article 66 (arbitration).

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**Commencement Information**

**I24** Sch. 8 para. 24 in force at 16.5.2008, see [art. 1](#)

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(1) 1995 c. 21.

**Changes to legislation:**

There are currently no known outstanding effects for the The London Gateway Port Harbour Empowerment Order 2008, SCHEDULE 8.