

SCHEDULE 2

Article 21

FOR PROTECTION OF ASSOCIATED BRITISH PORTS

1. In this Schedule—

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

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, (including for the avoidance of doubt the removal of the tidal stream generator in accordance with article 15), and “construct” and “constructed” shall be construed accordingly;

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

“plans” includes sections, descriptions, drawings and specifications.

2. For the protection of A. B. Ports the following provisions have effect unless otherwise agreed in writing between the undertaker and A. B. Ports.

3.—(1) Before commencing the construction of a tidal work the undertaker shall furnish to A. B. Ports for its approval, which it shall not unreasonably withhold, plans of the work showing the general mode of construction; and such works—

(a) shall not be constructed otherwise than in accordance with such plans as may be approved by A. B. Ports; and

(b) shall be executed to the reasonable satisfaction of A. B. Ports.

(2) If A. B. Ports fails to express its disapproval of any plans within 56 days after they have been delivered to it under sub-paragraph (1), it shall be deemed to have approved them.

4. The undertaker shall give to A. B. Ports not less than 14 days’ written notice of its intention to commence the construction of a tidal work and, not more than 14 days after completion of such construction, shall give to A. B. Ports written notice of such completion.

5. The undertaker shall at all reasonable times during construction of the tidal works and thereafter allow A. B. Ports, its servants and agents, access to the tidal works and all reasonable facilities for inspection of any tidal work.

6.—(1) After the purpose of any temporary works has been accomplished the undertaker shall with all reasonable dispatch, or after a reasonable period of notice in writing from A. B. Ports requiring the undertaker so to do, 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 undertaker.

(2) If the undertaker fails to do so within a reasonable period after receiving such notice, A. B. Ports may remove the same and may recover the reasonable costs of doing so from the undertaker.

7.—(1) If during the construction of a tidal work it is agreed, or in the absence of agreement it is proved to the satisfaction of an arbitrator appointed under paragraph 13, that any accumulation or erosion has been caused wholly or partly by the construction of any of the works, the undertaker, if so requested by A. B. Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3).

(2) If the undertaker refuses or fails to do so, A. B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

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

(a) in the case of an accumulation, the remedy shall be its removal; and

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(b) in the case of erosion, the remedy shall be carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) Where an arbitrator has established that such accumulation or erosion has 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 or exercise.

8. The undertaker shall pay to A. B. Ports the reasonable costs 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.

9.—(1) Without prejudice to the other provisions of this Schedule, the undertaker shall be responsible for, and make good to A. B. Ports, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) which may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of any of the tidal works by A. B. Ports or its duly authorised representative;
- (b) the carrying out of such surveys, inspections, tests and sampling within the river as A. B. Ports after consultation with the undertaker reasonably considers necessary to establish whether or not the discharge or dispersal of water into the river by means of any of the works is causing or has caused damage to or deterioration of any existing jetty or other structure owned or occupied by A. B. Ports;
- (c) the construction or maintenance of any of the tidal works, the failure of any of the tidal works or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction, exercise or failure;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of any of the tidal works or the exercise of the powers conferred by article 10.

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

(3) Nothing in this paragraph shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in subparagraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.

(4) A. B. Ports shall give to the undertaker notice in writing of any claim or demand 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.

10. The fact that any work or thing has been executed or done with the consent of A. B. Ports and in accordance with any conditions or restrictions prescribed by A. B. Ports or in accordance with plans approved or deemed to be approved by A. B. Ports or to its satisfaction or in accordance with any directions or award of any 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 Schedule.

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

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12. Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A. B. Ports at the commencement of this Order or any title of A. B. Ports in, to or over any lands or foreshore held or acquired by it.

13. Any difference arising between the undertaker and A. B. Ports under this Schedule (other than a difference as to the construction of this Schedule) shall be referred to, and determined by, a single arbitrator to be agreed between the undertaker and A. B. Ports, or, failing agreement, to be appointed by the President of the Institution of Civil Engineers.