
STATUTORY INSTRUMENTS

1998 No. 1016

HARBOURS, DOCKS, PIERS AND FERRIES

The Port of Birkenhead Harbour Empowerment Order 1998

Made - - - - *6th April 1998*

Coming into force - - *22nd April 1998*

Whereas Birkenhead Port Limited have applied for a harbour empowerment order under section 16 of the Harbours Act 1964(1);

And whereas the Secretary of State having, in pursuance of paragraph A2 of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex III to the Directive;

And whereas the Secretary of State has in accordance with paragraph 3A of the said Schedule, furnished bodies appearing to him to have environmental responsibilities with the information supplied to him under the said paragraph A2 of that Schedule and has consulted such bodies;

And whereas the Secretary of State has considered the objection made to the Order and not pursuant to paragraph 3(2)(a) of the said Schedule and not withdrawn and is of the opinion as is mentioned in paragraph 4(3)(b) of that Schedule;

And whereas the Secretary of State has considered the information supplied under the said paragraph A2 and is satisfied as mentioned in subsection (5) of the said section 16;

Now, therefore, the Secretary of State for the Environment, Transport and the Regions (being the appropriate Minister under subsection (1) of the said section 16(4)) in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:—

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- (1) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 3, 4(1) and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 2.
- (2) Paragraph A2 was inserted by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 (S.I. 1996/1946), regulation 2(2). Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10.
- (3) OJ No. L175, 5.7.85, p. 40.
- (4) For the definition of “the Minister” (mentioned in section 16) see section 57(1).
- (5) S.I. 1981/238 and S.I. 1997/2971.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port of Birkenhead Harbour Empowerment Order 1998 and shall come into force on 22nd April 1998.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847⁽⁶⁾;

“the Company” means Birkenhead Port Limited;

“Dockmaster of the Company” has the meaning given by paragraph (5)(b) of article 3 of this Order;

“deposited plans” and “deposited sections” mean respectively the plans and sections prepared in triplicate, signed by Head of Ports Division in the Department of the Environment, Transport and the Regions and marked “The Port of Birkenhead Harbour Empowerment Order 1998” of which copies are deposited at the offices of the Secretary of State for the Environment, Transport and the Regions, the offices of MDHC and the registered office of the Company;

“the Harbour Master” means the harbour master appointed by MDHC under the Mersey Docks and Harbour Acts and Orders 1857 to 1992 and includes his deputies and assistants;

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans;

“limits of jurisdiction” means the area described in article 4 of this Order;

“MDHC” means The Mersey Docks and Harbour Company;

“the port premises” means the works and the land and premises at any time belonging to, vested in or occupied by the Company and used, intended to be used or set aside for the purposes of, or in connection with, the commercial management and operation of the works;

“the river” means the river Mersey;

“tidal work” means so much of any work authorised by this order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the undertaking of the Company within the limits of jurisdiction as authorised by this Order;

“vessel” means a ship, boat or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968⁽⁷⁾ or any other amphibious vehicle or a seaplane;

“the works” means Works Nos. 1 to 3 authorised by article 5 of this Order, and any works constructed under article 7 of this Order for or in connection with or subsidiary to any of those works and includes those works as reconstructed, altered, replaced or relaid under paragraph (2) of the said article 5.

(6) 1847 c. 27.

(7) 1968 c. 59.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

(4) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

Incorporation of Harbours, Docks, and Piers Clauses Act 1847

3.—(1) The 1847 Act (except sections 6 to 25, 31, the proviso to section 32, sections 42, 48 to 50, 60 to 63, 66, 67, 73, and 77 to 82), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 69 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(3) Subject to article 20 of this Order, the byelaws which the Company may make by virtue of section 83 shall include such byelaws as they think fit for all or any of the following purposes—

- (a) the management, control and regulation of the port premises and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the port premises;
- (b) the control and regulation of vessels being within the prescribed limits;
- (c) the conduct of persons using or being on the port premises and the control or prohibition of smoking by such persons; and
- (d) safety precautions to be observed by persons on vessels being within the prescribed limits or persons using or being on the port premises.

(a) (4) (a) Section 85 shall have effect as if for the words from “in the prescribed manner” to the end of the section there were substituted the words “by the Secretary of State”.

(b) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972(8) shall apply to any byelaws made by the Company under the said section 83 as incorporated with this Order; and those provisions, in their application to any such byelaws, shall have effect as if the references to a local authority were references to the Company.

(c) Subsection (7) of the said section 236, in its application to any such byelaws, shall have effect as if—

(i) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”; and

(ii) there were added at the end the following proviso—

“Provided that, where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by

the Company and by any other persons who have, or are likely to have, been informed of it.”.

- (d) The said section 238, in its application to any such byelaws, shall have effect as if the reference to the proper officer of the authority were a reference to the secretary of the Company.
- (5) In construing the provisions of the 1847 Act as incorporated with this Order—
 - (a) the expression “the special Act” means this Order, the expressions “the Promoters of the undertaking” and “the undertakers” mean the Company, and the expression “the harbour, dock or pier” means the works;
 - (b) the expression “the harbour master” means the person appointed by the Company to be the Dockmaster with reference to the works (in this Order referred to as “the Dockmaster of the Company”);
 - (c) the meaning of the word “vessel” as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the 1847 Act;
 - (d) section 52 of the 1847 Act shall extend to empower the Dockmaster of the Company to give directions prohibiting the mooring of vessels within the prescribed limits;
 - (e) the reference in section 53 of the 1847 Act to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the Dockmaster of the Company to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

PART II

LIMITS OF JURISDICTION

Limits of jurisdiction

4.—(1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of the Dockmaster of the Company shall be exercised shall comprise the port premises together with so much of the river as lies within the area marked “Limit of jurisdiction” on the deposited plans.

(2) The jurisdiction of the Company as a harbour authority and the powers of the Dockmaster of the Company conferred under or by virtue of this Order shall be exercised only in relation to vessels going to, moored at or departing from the works and, without prejudice to the generality of the foregoing, shall not be exercised in relation to any vessel navigating or at anchor in the river unless any such vessel is obstructing the approaches to the works.

(3) In case of conflict between any direction given by the Harbour Master and any direction given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

PART III

WORKS

Power to construct works

5.—(1) Subject to the provisions of this Order, the Company may within in the lines and situations and within the limits of deviation shown on the deposited plans and according to the levels shown

on the deposited sections, construct and maintain the works hereinafter described, with all necessary works and conveniences connected therewith—

Work No. 1

An approach bridge of reinforced concrete deck on tubular steel piles, with steel linkspan and floating pontoon providing berths and associated facilities for vessels, commencing at a point on the quay edge 112 metres south east of the south east corner of Wallasey Dock at a point at SJ 32781 89800, proceeding thence in an easterly direction for 144 metres and terminating at a point at SJ 32923 89777.

Work No. 2

A series of dolphins of reinforced concrete deck on tubular steel piles, with interlinking steel walkways, commencing at the termination of Work No. 1, proceeding thence in a northerly direction for 236 metres and terminating at a point at SJ 32862 90005.

Work No. 3

A series of dolphins of reinforced concrete deck on tubular steel piles, with interlinking steel walkways commencing at the termination of Work No. 1, proceeding thence in a southerly direction for 239 metres and terminating at a point at SJ 32984 89546.

(2) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, alter, replace or relay the works and may maintain the same as reconstructed, altered, replaced or relaid.

Power to deviate

6. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

Subsidiary works

7. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works.

Period for completion of works

8. If the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

Power to dredge

9.—(1) Subject to article 25 of this Order, the Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the works and may use, appropriate or dispose of the materials (other than

wreck within the meaning of Part IX of the Merchant Shipping Act 1995⁽⁹⁾), from time to time dredged by them.

(2) No materials so dredged, other than those dredged for the purpose of constructing the works, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(3) The Company shall consult with MDHC before exercising the powers conferred on them by this article.

Obstruction of works

10. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Tidal works not to be executed without approval of Secretary of State

11.—(1) A tidal work shall not be constructed, reconstructed, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, altered, replaced or relaid in contravention of paragraph (1) above or of any condition or restriction imposed under the said paragraph —

- (a) the Secretary of State may by notice in writing require the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Lights on tidal works during construction

12.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, alteration, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State or MDHC or as, failing agreement between them, the Secretary of State shall from time to time direct.

(2) If the Company fail to comply in any respect with any direction given under this article, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

13.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall as soon as reasonably practicable notify Trinity House and MDHC and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation

(9) 1995 c. 21, see section 255(1).

as Trinity House or MDHC or as, failing agreement between them, Trinity House shall from time to time direct.

(2) If the Company fail to notify Trinity House and MDHC as required by paragraph (1) above or to comply with any requirement of a direction given under the said paragraph they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

14.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or MDHC may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State or MDHC or as, failing agreement between them, the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State or MDHC may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State or MDHC may execute the works specified in the notice and any expenditure incurred by him or MDHC in so doing shall be recoverable from the Company.

Survey of tidal works

15. If the Secretary of State or MDHC deems it expedient to do so, the Secretary of State or MDHC may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State or MDHC in any such survey and examination shall be recoverable from the Company.

Permanent lights on tidal works

16.—(1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House or MDHC or as, failing agreement between them, Trinity House may from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under paragraph (1) above they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART IV

MISCELLANEOUS AND GENERAL

Power to mortgage port premises

17. The Company may mortgage, charge or otherwise encumber the port premises.

Power to make charges

18.—(1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

Power to appropriate berths, etc.

19.—(1) Notwithstanding anything in any enactment, the Company may set apart or appropriate any berths, land or facilities within the port premises for the exclusive or preferential use and accommodation of any particular trade, person, activity, vessel or goods or any class of trades, person, activities, vessels or goods, subject to such terms and conditions as the Company think fit.

(2) No person or vessel shall make use of any berth, land or facilities set apart or appropriated under this article without the consent of the Dockmaster of the Company and he may order any person or vessel making use thereof without such consent to leave or be removed and the provisions of section 58 (Power of harbour master as to moving of vessels in harbour) of the 1847 Act shall extend and apply *mutatis mutandis* to and in relation to any such vessels.

Further provisions as to byelaws

20.—(1) The Company shall consult MDHC and the Environment Agency not less than three months before making any byelaws under or by virtue of this Order.

(2) The Company shall not under or by virtue of this Order—

- (a) make any byelaw for the control or regulation of vessels not going to, moored at or departing from the works;
- (b) make any byelaw which in the reasonable opinion of the Harbour Master would conflict with any byelaws made by MDHC or with any powers exercisable by MDHC or the Harbour Master for the regulation of navigation in the river; or
- (c) make any byelaw regulating any vessel owned or used by MDHC or regulating the conduct of officers of MDHC whilst in the exercise of their duties as such.

(3) The Company shall not make any byelaw under or by virtue of this Order so as to conflict with any byelaws of the Environment Agency.

Local inquiries

21. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order, and subsections (2) to (5) of section 250 of the Local Government Act 1972(10) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

Defence of due diligence

- (a) **22.** (1) (a) In proceedings for an offence under any provision of this Order mentioned in sub-paragraph (b) below it shall be a defence for the Company to prove that they took

(10) Subsection (2) has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.

all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

- (b) The provisions referred to in sub-paragraph (a) above are—
- article 12;
 - article 13; and
 - article 16.

(2) If in any case the defence provided by sub-paragraph (a) of paragraph (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Power to remove goods

23.—(1) If any goods are left on or in any part of the port premises the Company may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner:

Provided that notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

- (2) In this article, "goods" includes vehicles and equipment.

Obstruction of officers

24.—(1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who in giving such information as is mentioned in sub-paragraph (c) above makes a statement which he knows to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Crown rights

25.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Company to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

Saving for Trinity House

26. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Protection of The Mersey Docks and Harbour Company

27.—(1) The Schedule to this Order shall have effect for protecting the interests of MDHC (being a body which may be affected by other provisions of this Order).

(2) Where under the Schedule to this Order any difference is to be determined by arbitration, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of agreement, to be appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers.

Exclusion of certain enactments

28. The following enactments shall not apply to vessels moored or loading or discharging cargoes at the port premises—

- (a) section CIII (As to vessels loading or discharging in the River) of the Mersey Dock Acts Consolidation Act 1858⁽¹¹⁾;
- (b) section 30 (Power to make byelaws regulating time during which vessels may remain in Mersey or sea approaches) of the Mersey Docks and Harbour Board Act 1889⁽¹²⁾.

Signed by authority of the Secretary of State for Environment, Transport and the Regions

Glenda Jackson
Parliamentary Under Secretary of State,
Department of the Environment, Transport and
the Regions

6th April 1998

⁽¹¹⁾ 1858 c. xcii.

⁽¹²⁾ 1889 c. cxl.

SCHEDULE

Article 27

PROTECTION OF THE MERSEY DOCKS AND HARBOUR COMPANY

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, and “constructed” shall be construed accordingly;

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

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

2.—(1) Before commencing the construction of a tidal work the Company shall furnish to MDHC for its approval, which it shall not unreasonably withhold, plans of the work showing the general mode of construction and such work shall not be constructed otherwise than in accordance with such plans as may be approved by MDHC or as may be determined as hereinafter provided and all such works shall be executed to the reasonable satisfaction of MDHC.

(2) When submitting plans to the Secretary of State pursuant to article 11 (Tidal works not to be executed without approval of Secretary of State) of this Order, the Company shall send a copy thereof to MDHC and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that article, send a copy to MDHC.

(3) In the event of MDHC failing to express its disapproval of any plans within 56 days after they have been delivered to it under this paragraph, it shall be deemed to have approved them.

3. The Company shall give to MDHC not less than fourteen days' written notice of their intention to commence the construction of a tidal work and, not more than fourteen days after completion of such construction, shall give to MDHC written notice of such completion.

4. The Company shall at all reasonable times during construction of the works and thereafter allow MDHC, its servants and agents, access to the works and all reasonable facilities for inspecting any tidal work

5. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from MDHC requiring them 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 Company and, on their failing so to do within a reasonable period after receiving such notice, MDHC may remove the same and charge the Company with the reasonable expense of so doing, which expense the Company shall repay to MDHC.

6.—(1) If, during the construction of a tidal work or within 10 years after the completion of such work and wholly or partly in consequence of its construction or if during the exercise of the powers conferred by article 9 (Power to dredge) of this Order or within 10 years thereafter and wholly or partly in consequence thereof, there is caused or created an accumulation or erosion, the Company, if so requested by MDHC before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, MDHC may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction or exercise arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any

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recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company'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 without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

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

- (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 paragraph 8(1)(b) of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by the said article 9, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

7. The Company shall—

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

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

- (a) the perusal of plans and the inspection of any of the tidal works or the regulation of the exercise of powers conferred by article 9 (Power to dredge) by this Order by MDHC or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks thereof)—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as MDHC has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the Company are liable to remedy under paragraph 6 of this Schedule; and
 - (ii) where MDHC has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by the said article 9 is causing or has caused any accumulation or erosion as aforesaid;
- (c) the construction of any of the tidal works or the exercise of the powers conferred by the said article 9, the failure of any of the tidal works or the undertaking by MDHC of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of MDHC arising from such construction, exercise or failure;

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(d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works or the exercise of the powers conferred by the said article 9.

(2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the Company shall indemnify MDHC 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 Company to the extent that any losses, costs, charges, damages, expenses, claims or demands as referred to in sub-paragraphs (1) and (2) of this paragraph are attributable to negligence on the part of MDHC or of any person in its employ or of its contractors or agents.

(4) MDHC shall give to the Company notice of any claim or demand for which the Company 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 Company.

9. The fact that any work or thing has been executed or done with the consent of MDHC and in accordance with any conditions or restrictions prescribed by MDHC or in accordance with plans approved or deemed to be approved by MDHC or to its 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 Company from any liability under the provisions of this Schedule.

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

11. Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, MDHC or the Harbour Master at the coming into force of this Order.

12. Any difference arising between the Company and MDHC under this Schedule shall be determined by arbitration.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Birkenhead Port Limited (the applicants for the Order) to construct and maintain specified works at Birkenhead and to carry out subsidiary works. The specified works, together with adjacent land of the Company used for the business, form the “port premises”.

The Order defines the limits of jurisdiction of the Company as a harbour authority and confers various powers on the Company for the operation and maintenance of its undertaking.