

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.