
STATUTORY INSTRUMENTS

1999 No. 1664

The Gateshead (Baltic Millennium Bridge) Order 1999

PART V

PROTECTIVE PROVISIONS

Protection of Port of Tyne Authority

17.—(1) For the protection of the Authority, the following provisions shall have effect and shall apply save as otherwise agreed in writing between the undertaker and the Authority.

(2) Section 3(3)(a) of the Port of Tyne Act 1990⁽¹⁾ (which exempts works specifically authorised by any enactment from the prohibition on carrying out works without a works licence granted under that Act) shall not apply in the case of the authorised works.

(3) The undertaker shall at all reasonable times during construction of the authorised works and thereafter allow the Authority, their servants and agents, access to those works and all reasonable facilities for inspecting any tidal work.

(4) After the purpose of any temporary works has been accomplished, or after a reasonable period of notice in writing from the Authority requiring it so to do, the undertaker 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 undertaker and, on its failing so to do within a reasonable period after receiving such notice, the Authority may remove the same and charge the undertaker with the reasonable expense of so doing, which expense the undertaker shall repay to the Authority.

(5) If, during the construction of a tidal work or within 10 years after the completion of such work and as a consequence (whether in whole or in part) of its construction, there is caused or created an accumulation or erosion, the undertaker, if so requested by the Authority before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in paragraph (7) below and, if it refuses or fails so to do, the Authority may themselves cause the work to be done and may recover the reasonable cost thereof from the undertaker.

(6) Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in paragraph (5) above and be remedied in accordance with paragraph (7) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the undertaker during that period of 10 years and at any time thereafter, save that the undertaker'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 or exercise.

(7) For the purpose of paragraphs (5) and (6) above—

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

(1) 1990 c. xxxi.

(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.

(8) In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph (11) (b) below establish that any accumulation or erosion mentioned in paragraphs (5) or (6) above would have 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 as aforesaid.

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

(10) The undertaker shall—

- (a) pay to the Authority the reasonable costs incurred by the Authority 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 any tidal works such fog signalling apparatus as may be reasonably required by the Authority and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and
- (c) afford to the 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.

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

- (a) the inspection of any of the tidal works by the Authority or their duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river)—
 - (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 Authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this article; and
 - (ii) where the 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 Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such construction, exercise or failure; and
- (d) any act or omission of the undertaker or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

(12) Without prejudice to the generality of paragraph (11) above, the undertaker shall indemnify the Authority 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 paragraph.

(13) Nothing in this article shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in paragraphs (11) and (12) above are attributable to negligence on the part of the Authority or of any person in their employ or of their contractors or agents.

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

(15) The fact that any work or thing has been executed or done with the consent of the Authority and in accordance with any conditions or restrictions prescribed by the Authority or in accordance with plans approved or deemed to be approved by the 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 undertaker from any liability under the provisions of this article.

(16) With the exception of any duty owed by the Authority to the undertaker which is expressly provided for in the foregoing provisions of this article, nothing in this Order shall be construed as imposing upon the Authority either directly or indirectly, any duty or liability to which the Authority would not otherwise be subject and which is enforceable by proceedings before any court.

(17) Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Authority or the harbour master at the date of making of this Order.

(18) In this article—

“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 river or other structure of whatever nature;

“plans” includes arrangements, sections, descriptions, drawings and specifications;

“the river” means the River Tyne.