

SCHEDULE 8

PART 1

For the protection of Associated British Ports

Interpretation

1. In this Part—

“accumulation” means any accumulation of silt or other material (including any materials used to construct the authorised development) which constitutes an impediment to navigation at or in the approaches to the harbours;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, or the carrying out of an operation, and “construct” and “constructed” are to be construed accordingly;

“erosion” means any erosion of the bed or banks of the sea or of any jetty or other structure of whatever nature within the harbours or the approaches to the harbours;

“the harbours” means the ports of Swansea and Port Talbot;

“plans” includes sections, descriptions, drawings, specifications, proposed method statements and hydraulic information;

“port land” means any land held by AB Ports for the purpose of its statutory undertaking;

“specified work” means any tidal work and any work or operation authorised by this Order on port land or which may affect port land or navigation in respect of the harbours or the functions of AB Ports in relation to the operation of the harbours; and

“tidal work” includes dredging authorised by this Order or any marine licence granted under Part 4 of the 2009 Act relating to the authorised development.

General

2. For the protection of AB Ports in relation to the harbours the following provisions have effect unless otherwise agreed in writing between the undertaker and AB Ports.

Acquisition or use of port land

3.—(1) The undertaker must not under the powers conferred by this Order acquire or use, or acquire new rights over, port land without the consent of AB Ports.

(2) The undertaker must not exercise powers conferred by article 15 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any port land without the consent of AB Ports.

(3) Article 25 (power to override easements and other rights) does not apply to any rights held by AB Ports for the purpose of its statutory undertaking, except with the consent of AB Ports.

(4) The consent of AB Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable conditions.

Approval of plans and arrangements

4.—(1) Before commencing the construction of any specified work, the undertaker must furnish to AB Ports plans of that work for its approval.

(2) Before decommissioning the generating station comprised in the authorised development the undertaker must furnish to AB Ports for its approval proposed arrangements for the removal or retention of the authorised development and for making it safe and managing it after it has ceased to be used for the generation of electricity.

(3) Any approval of AB Ports under this paragraph—

- (a) must not be unreasonably withheld;
- (b) may be given subject to such reasonable requirements as AB Ports may make for the protection of the harbours and navigation within the harbours and the approaches to the harbours, including a requirement for the undertaker to carry out protective works at its own expense;
- (c) may not vary the operation of this Order.

(4) The undertaker must—

- (a) carry out any specified work and any protective works required under sub-paragraph (3) in accordance with the plans approved under sub-paragraph (1) or settled under article 50 (arbitration); and
- (b) comply with any arrangements approved under sub-paragraph (2) or settled under article 50 (arbitration).

(5) If AB Ports fails to express its disapproval of any plans or arrangements within 56 days after they have been delivered to it under sub-paragraph (1) or (2), it is deemed to have approved them.

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning) or a decommissioning programme approved under that article.

Notice of works

5. The undertaker must give to AB Ports not less than 56 days' written notice of its intention to commence the construction of a specified work and, not more than 14 days after completion of such construction, must give to AB Ports written notice of such completion.

Inspection

6. The undertaker must at all reasonable times during construction of a specified work and thereafter allow AB Ports, its servants and agents, access to such work and all reasonable facilities for inspection of any such work subject always to the reasonable stipulations of the undertaker relating to health, safety, security and confidentiality.

Temporary works

7.—(1) After the purpose of any temporary works has been accomplished the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from AB Ports requiring the undertaker so to do, remove any such temporary works or any materials relating to them which may have been placed on port land or below the level of high water within the harbours or the approaches to the harbours by or on behalf of the undertaker.

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

Erosion or accumulation

8.—(1) If during the construction of a tidal work or after the completion of that work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion the undertaker, if so requested by AB Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction and, if it refuses or fails to do so, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

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

(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 AB Ports reasonably requires.

(3) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 12(1)(b) establish that such accumulation or erosion 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.

(4) Nothing in this paragraph removes the need for a marine licence under Part 4 of the 2009 Act.

Lighting, etc.

9. The undertaker shall pay to AB Ports the reasonable costs of such alterations to the marking and lighting of the harbours and the approaches to the harbours as may be necessary in consequence of the construction of a tidal work.

Abandoned or decayed works

10.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order is abandoned or falls into decay, insofar as it affects or otherwise impacts upon the operation of the harbours or navigation in the approaches to the harbours, AB Ports may by notice in writing require the undertaker 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 AB Ports 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, AB Ports may by notice in writing require the undertaker 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 undertaker so elects, to remove the tidal work and (to such extent as AB Ports 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 undertaker 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, AB Ports may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

(4) This provision shall not apply where any work is being managed and operated in accordance with any approval given by AB Ports.

(5) In the event of a difference or dispute between the undertaker and AB Ports as to the necessity of any steps or works specified in a notice by AB Ports under this paragraph, such difference or dispute shall be determined by arbitration in accordance with article 50 (arbitration).

(6) Nothing in this paragraph affects the operation of article 42 (application of Energy Act 2004 in relation to decommissioning), or a decommissioning programme approved under that article.

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Byelaws

11. The undertaker must consult AB Ports not less than 42 days before making any byelaw under article 47 (byelaws) and shall not make any byelaw which in the reasonable opinion of AB Ports conflicts with any byelaws made by AB Ports or with any powers exercisable by AB Ports or a harbour master of AB Ports for the regulation of navigation at the harbours or the approaches to the harbours.

Indemnity

12.—(1) Without limiting the other provisions of this Part, the undertaker is to be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and navigation schemes and the inspection of a specified work by AB Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within the harbours and the approaches to the harbours—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the River Tawe as AB Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the undertaker is liable to remedy under paragraph 8; and
 - (ii) where AB Ports has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any such accumulation or erosion;
- (c) the construction or failure of a specified work, or the undertaking by AB Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of AB Ports arising from such construction or failure including—
 - (i) any additional costs of dredging incurred by AB Ports as a result of contamination of the seabed caused by the construction of the specified work; and
 - (ii) any damage to the lock gates or damage from flooding caused by increased wave reflection as a result of the construction of the specified work;
- (d) any act or omission of the undertaker or their servants or agents whilst engaged in the construction of a specified work.

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

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

(4) AB Ports must 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 may be made without the consent in writing of the undertaker.

13. The fact that any work or thing has been executed or done with the consent of AB Ports and in accordance with any conditions or restrictions prescribed by AB Ports or in accordance with any plans approved or deemed to be approved by AB 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 Welsh Ministers and any conditions or restrictions imposed by them, does not relieve the undertaker from any liability under the provisions of this Part.

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

Statutory functions

15. Save to the extent expressly provided for nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, AB Ports at the commencement of this Order.

Arbitration

16. Any difference or dispute arising under this Part shall, unless otherwise agreed in writing between the undertaker and AB Ports, be determined by arbitration in accordance with article 50 (arbitration).