

SCHEDULES

SCHEDULE 1

Article 12(1) and (2)

PURPOSES FOR WHICH BYELAWS MAY BE MADE

1. The purposes mentioned in article 12(2) for which the conservancy authority may make byelaws include any of the following—

- (a) regulating the use of any works and facilities provided by the authority;
- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the estuary and to any aids to navigation which are used in connection with the estuary;
- (c) regulating the conduct of all persons in the estuary, not being—
 - (i) members of a police force;
 - (ii) officers or servants of the Crown; or
 - (iii) members of a fire brigade,whilst in the exercise of their duties as such;
- (d) regulating the placing, maintenance and use of moorings within the estuary;
- (e) preventing and removing obstructions or impediments within the estuary;
- (f) regulating or prohibiting the use in the estuary, or on board any vessel in the estuary, of—
 - (i) fires,
 - (ii) lights, including false lights,
 - (iii) tobacco or any other substance, equipment, tools or appliances which the authority considers involve a risk of fire, explosion or chemical reaction;
- (g) requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the estuary;
- (h) regulating the admission to, the movement within, and the departure of vessels from the estuary, or the removal of vessels, and for the good order and government generally of vessels while within the estuary;
- (i) regulating the navigation, berthing and mooring of vessels within the estuary and their speed and manner of navigation;
- (j) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the estuary;
- (k) prescribing the lights and signals to be exhibited or made—
 - (i) by vessels or other devices used for marking obstructions within the estuary; or
 - (ii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the estuary;
- (l) prohibiting or regulating the discharge into the estuary of any material or substance;
- (m) regulating or prohibiting fishing for marine creatures of any type and by whatever means from—

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- (i) any pier, jetty, wharf, breakwater or other installation or structure of any kind within the estuary,
- (ii) any vessel within the estuary, or
- (iii) the foreshore,

where, in the opinion of the authority, such fishing may interfere with the safety of navigation in the estuary;

- (n) regulating or prohibiting bathing, and for securing the protection of bathers, within the channels of the estuary;
- (o) regulating or prohibiting the use of vehicles on the foreshore within the estuary;
- (p) regulating the berthing, mooring and anchoring of vessels in any part of the estuary;
- (q) regulating the use within the estuary of yachts, sailing boats, sailboards, rowing boats, kite surfers, pleasure craft, windsurfers, personal watercraft and other small craft;
- (r) regulating the holding of regattas and other public events in the estuary;
- (s) regulating or prohibiting the activities within the estuary of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar pursuits;
- (t) preventing the disposal of any waste matter except at places or in a manner prescribed by the authority;
- (u) regulating the conveyance, landing, laying down, discharge or removal of goods, gear, equipment, timber, logs, floats, or rafts of timber or other items within the estuary;
- (v) regulating the exercise of the powers vested in the harbour master;
- (w) making the carrying out of specified estuary operations, or the conduct of persons in the estuary, subject to the approval with or without conditions, control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such approval, condition, control or direction;
- (x) for the conservation of the natural beauty of all or any part of the estuary or of any of the fauna, flora or geological or physiographical features in the estuary and all other natural features; and
- (y) for the purposes specified in section 83 (byelaws) of the 1847 Act.

2. In this Schedule—

- (a) “kite surfers” mean boards with a kite or kites designed to be operated by a person or persons standing upright on them;
- (b) “personal watercraft” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—
 - (i) by means of a handlebar-operated linkage system (with or without a rudder at the stern); or
 - (ii) by the person or persons riding the craft using their body weight for the purpose; or
 - (iii) by a combination of the methods referred to in sub-paragraphs (i) and (ii);
- (c) “signals” includes sound signals; and
- (d) “windsurfers” mean boards with a sail or sails designed to be operated by a person or persons standing upright on them.

SCHEDULE 2

Article 12(10)

REGULATION OF THE ESTUARY

PART 1

PRELIMINARY

Interpretation

1. In this Schedule—

“the Admiralty Charts” means the Admiralty Charts for the River Dee, its estuary and its approaches published at the date of this Order coming into force and numbered 1953 and 1978(1);

“the Collision Regulations” means the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996(2) or such other regulations for the prevention of collisions as may from time to time be made under sections 85 (safety and health on ships) and 86 (supplementary provisions for section 85) of the 1995 Act;

“power-driven vessel” includes any vessel propelled by machinery;

“quay” means any quay, wharf, jetty, dolphin, landing stage or other structure used for berthing or mooring vessels, and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto;

“under way” in relation to a vessel means a vessel not at anchor, made fast to the shore or aground; and

“whistle” means any vessel’s whistle or siren.

Application

2. The provisions of this Schedule have effect in addition to any general direction or any special direction given by the conservancy authority or the harbour master, so far as they are consistent with it, but are subject to the provisions of Schedule 3 to this Order.

PART 2

NAVIGATION

Vessel movements

3. The master of a vessel other than a small vessel must give prior notice to the harbour master or the harbour master’s agent of the vessel’s arrival at, departure from or movement within, the estuary. Declaration of particulars of vessel

4. The master of a vessel, other than a small vessel, arriving at the estuary must, if required by the harbour master, provide to the harbour master a declaration in the form to be obtained from the harbour master containing a correct statement of the tonnage and draught of the vessel, its last port of call, name and address of owner, destination, and particulars of any cargo and passengers.

Vessels to be navigated with care and caution

(1) Admiralty charts for the River Dee, its estuary and approaches can be bought from an Admiralty Chart Agent, details of these suppliers can be obtained at <https://www.admiralty.co.uk>.

(2) S.I. 1996/75, regulation 1 was amended by the Merchant Shipping (High Speed Craft) Regulations 2004 (S.I. 2004/302), Schedule 1, paragraph 16; regulation 6 was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), Schedule 4(1), paragraph 53.

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5.—(1) Subject to sub-paragraph (2), the master of a vessel navigating in the estuary must navigate the vessel with such care and caution and at such speed and in such manner as not to—

- (a) endanger the lives of, or cause injury to, persons or damage to property,
- (b) obstruct or prejudice the navigation, manoeuvring, loading or discharging of vessels, or
- (c) cause unnecessary damage to moorings, the banks of the estuary or other property.

(2) Sub-paragraph (1) is without prejudice to the Collision Regulations.

Vessels not to make fast to aids to navigation

6.—(1) Subject to sub-paragraph (2), the master of a vessel must not—

- (a) make fast the vessel to, or
- (b) knowingly cause or permit the vessel to lie against,

any buoy, beacon or mark used for navigational purposes.

(2) Sub-paragraph (1) does not apply to vessels used for the purposes of—

- (a) erecting or placing,
- (b) altering,
- (c) discontinuing, or
- (d) removing,

aids to navigation in, or in any place immediately adjacent to, the estuary in accordance with the authority given by the harbour master.

Notification of accidents and deficiencies, etc.

7.—(1) The master of a vessel which—

- (a) has been involved in a collision with any vessel or property, or has been sunk or grounded or become stranded, in the estuary,
- (b) is within, or about to enter, the estuary and by reason of accident, fire, defect or otherwise is in such a condition as to affect its safe navigation or to give rise to danger to other vessels or property, or
- (c) in any manner gives rise to an obstruction to a channel,

must give immediate notice of that fact to the harbour master and, as soon as practicable following the giving of such notice, provide the harbour master with full details in writing.

(2) Where the condition of a vessel is such that it is not or may not be seaworthy, the master must not move the vessel—

- (a) except to clear the channel, or
- (b) except to moor or anchor it in safety,

unless the master moves it with the permission and in accordance with the directions of the harbour master.

(3) The harbour master may mark any vessel the subject of a notice given under sub-paragraph (1) in any manner that the harbour master considers appropriate.

(4) In sub-paragraph (2), “seaworthy” in relation to a vessel means that the vessel with its master and crew is capable, having regard to any intended movement of the vessel within or through the estuary, of being navigated or manoeuvred safely.

Vessels to have competent helmsman

8.—(1) Subject to sub-paragraph (2), the master of a vessel must ensure that—

- (a) it is steered at all times by a person competent to do so, and

- (b) no automatic devices or equipment are used for steering purposes unless attended by a competent helmsman.
- (2) The requirement of sub-paragraph (1) to ensure that a vessel is steered at all times by a person competent to do so does not apply if a person steering a vessel is undergoing training, so long as—
 - (a) that person is being supervised on board the vessel by such a competent person; or
 - (b) that person is steering the vessel in such part of the estuary as may be designated by the harbour master as suitable for training purposes.
- (3) A person under the age of 16 years must not steer or navigate within the estuary any power-driven vessel of over 10 horsepower unless that person is—
 - (a) in possession of an appropriate Royal Yachting Association or equivalent qualification, or
 - (b) accompanied by a person aged 18 years or over who is competent to steer or navigate such a vessel.

Master to remain on bridge

- 9. The master of a power-driven vessel under way must either—
 - (a) be on the bridge or at the control position of the vessel; or
 - (b) ensure that there is on the bridge or at the control position a member of the crew who is capable of taking charge of the vessel and, when a pilot is on board, is capable of carrying out the pilot's directions for the conduct of the vessel.

Use of whistles

- 10. A person must not use a whistle within the estuary except—
 - (a) as a signal of distress,
 - (b) to prevent collision in compliance with the Collision Regulations, or
 - (c) with the prior permission of the harbour master, for the purpose of—
 - (i) the management of a race or any similar event,
 - (ii) the training of a person in the use of a small vessel, or
 - (iii) testing the whistle.

Anchorage

- 11.—(1) Subject to sub-paragraph (3), except with the permission of the harbour master, a vessel must not anchor—
 - (a) within 100 metres of the line of any cable or pipe laid down in the estuary, when such line is indicated—
 - (i) by posts or other discernible marks on shore,
 - (ii) in a general direction,
 - (iii) or on the Admiralty Charts; or
 - (b) within 150 metres of any breakwater or training wall.
- (2) Without prejudice to sub-paragraph (1), if at any time the anchor of any vessel hooks any—
 - (a) moorings,
 - (b) electric cable,
 - (c) moorings of buoys, or
 - (d) pipe,

the master of the vessel must immediately give notice of it to the harbour master and must, if it is safe and practicable to do so, await the harbour master's instruction before proceeding to clear the same.

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(3) Sub-paragraph (1)(b) does not apply to small vessels.
Obstruction of the channels

12. Except with the permission of the harbour master, a vessel must not lie or be—
- (a) moored,
 - (b) anchored,
 - (c) grounded,
 - (d) deposited, or
 - (e) run ashore,

in the channels.
Shipkeepers

13.—(1) A vessel that is compelled or allowed to anchor in or near the channels must not be left at any time without a shipkeeper.

(2) For the purposes of sub-paragraph (1), a vessel is anchored near the channels if that vessel could at the extent of its swing and having regard to—

- (a) prevailing or anticipated weather conditions, and
- (b) the potential to drag the vessel’s anchor,

infringe on the channels.

(3) In this paragraph, “shipkeeper” means a person charged with the care and safety of a vessel, in the absence of its master, which is compelled or allowed to anchor in or near the channels in accordance with sub-paragraph (1).

PART 3

BERTHING AND MOORING

Provision of proper fenders

- 14.—(1) The—
- (a) master, and
 - (b) owner

of a vessel must ensure that it is provided with a sufficient number of fenders adequate for the size of the vessel.

- (2) When—
- (a) berthing,
 - (b) departing, or
 - (c) lying,

as the case may be, at or from a quay, or against other vessels, the master must cause the vessel to be fended off from that quay or those other vessels so as to prevent damage to that quay, those other vessels or any other property.

Vessels to be properly berthed

15. The master of a vessel must at all times keep the vessel properly and effectively moored when berthed or lying at any quay.

Vessels adrift

16. The master of a vessel which parts from its moorings must, as soon as possible, report the same to the harbour master.

Access to and egress from vessels

17. The master and the owner of a vessel, other than a small vessel, while berthed alongside a quay must—

- (a) provide and maintain a sufficient, safe and proper gangway for the access and egress of all persons having lawful business on the vessel, and
- (b) during the hours of darkness provide sufficient lighting to illuminate the whole length of the gangway.

Sufficiency of crew

18.—(1) Except with the permission of the harbour master, the master of a vessel other than a small vessel must at all times when that vessel is within the estuary ensure that—

- (a) the vessel is capable of being safely moved and navigated, and
- (b) there are sufficient crew or other competent persons readily available—
 - (i) to attend to the vessel's moorings,
 - (ii) to comply with any directions given by the harbour master for the unmooring, mooring and moving of the vessel, and
 - (iii) to deal, so far as is reasonably practicable, with any emergency that may arise.

(2) If any contract is entered into to secure compliance with sub-paragraph (1) by persons other than the vessel's crew, the name and address of the person with whom the contract is entered into must be disclosed to the harbour master.

Vessels to be kept in a movable condition

19.—(1) The master of a vessel, other than a small vessel lying at a recognised mooring or anchorage, must not, except where the vessel is lying aground, take any steps to render that vessel incapable of movement without first notifying the harbour master.

(2) Subject to the exception referred to in sub-paragraph (1) the master of a vessel must at all times keep the vessel so loaded and ballasted and in such condition that it is capable of being safely moved.

(3) Where a vessel is at any time not capable of being safely moved by means of its own propulsive machinery, the master or owner must inform the harbour master immediately and provide any further information which the harbour master may reasonably require.

Use of engines while vessel moored or berthed

20. The master of a vessel which is moored at a quay or attached to any mooring device must not permit the engines of the vessel to be worked in such a manner as to—

- (a) cause unnecessary injury or damage to the bed or banks of the estuary or to any other vessel or property, or
- (b) cause unnecessary disturbance or noise pollution to any other vessel or property.

Vessels not to make fast to unauthorised objects

21. A person must not make a vessel fast to any—

- (a) post,
- (b) quay,
- (c) ring,
- (d) fender, or
- (e) any other thing or place,

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that is not assigned for that purpose.

Access across decks

22. The master of a vessel—

- (a) alongside a quay, or
- (b) alongside any vessel already berthed within the estuary,

must, if required to do so by the harbour master, give free access across the deck of the vessel for persons and goods to and from other vessels berthed alongside that vessel.

Lost anchor, cable or propeller

23. The master of a vessel which has slipped or parted from, or lost any anchor, chain, cable or propeller must—

- (a) as soon as reasonably practicable give notice to the harbour master—
 - (i) of that occurrence and,
 - (ii) if possible, of the position of the anchor, chain, cable or propeller and, if the harbour master so directs, must cause it to be recovered as soon as reasonably practicable, and
- (b) in the case of an anchor or propeller, leave a buoy to mark the position of it if this is known.

PART 4

GENERAL

Inspecting facilities, etc., to be made available to harbour master

24. The master of a vessel must, so far as may be required by the harbour master in the exercise of the harbour master's duties, afford the harbour master access to the vessel or any part of it and provide all reasonable facilities for its inspection and examination.

Navigation under influence of drink or drugs prohibited

25.—(1) This paragraph applies to a person who—

- (a) is on board a ship which is under way,
- (b) is exercising, or purporting to exercise, a function in connection with the navigation of the ship, and
- (c) is not a person to whom section 78 or 79 (offences committed by professional staff on-duty and professional staff off-duty) of the 2003 Act applies.

(2) A person to whom this paragraph applies commits an offence if that person's ability to exercise the function mentioned in sub-paragraph (1)(b) is impaired because of drink or drugs.

(3) A person to whom this paragraph applies commits an offence if the proportion of alcohol in that person's breath, blood or urine exceeds the limit prescribed for the purposes of Part 4 (Shipping: alcohol and drugs) of the 2003 Act.

(4) In this paragraph, "the 2003 Act" means the Railway and Transport Safety Act 2003(3).

(5) This paragraph ceases to have effect on the date that section 80 (offences committed by non-professionals) of the 2003 Act comes into force.

Vessels not to be fumigated without permission

26. The master or owner of a vessel must not cause or permit it to be fumigated without the prior permission of the harbour master.

Discharges into estuary prohibited

(3) 2003 c. 20.

27.—(1) A person must not discharge any matter or cause or permit any matter to be discharged into the waters or on to the bed of the estuary or place or cause or permit any matter or object to be placed so that it may fall, be blown, drift or flow into the estuary.

(2) The provisions of this paragraph do not apply to—

- (a) the discharge or escape of any substance, the discharge or escape of which, is subject to the provisions of the Prevention of Oil Pollution Act 1971(4);
- (b) anything specifically authorised by or exempted from any other enactment, or authorised by a consent given under, any other enactment.

Fishing

28.—(1) A person fishing in the estuary must comply with directions given to that person by the harbour master.

(2) Subject to sub-paragraphs (4) and (5), no person must fish—

- (a) in the channels in contravention of a direction of the harbour master; or
- (b) by trawl, nets or dredges within 100 metres of the line of any cable or pipe laid down in the estuary.

(3) A person must not cast or place any drift, trawl or other net in such a position as to be likely to become an obstruction or danger to any property, including in particular any vessel or mooring.

(4) All surface set nets and such other apparatus and equipment which could impede surface navigation in the estuary must be attended at all times.

(5) All markers used to indicate the position of fishing equipment must be clearly marked with either the owner's name or boat registration number.

No dragging or grappling without permission

29. Without prejudice to paragraph 23 (lost anchor, cable or propeller), a person must not—

- (a) drag, dredge or grapple for any material or article, or
- (b) remove any material or article from the bed of the estuary,

without the written consent of the harbour master, save for the purpose of immediately recovering any article dropped overboard from a vessel.

Vessels to have names marked on them

30. The owner of a vessel greater than 10 metres in length which is not registered as a ship under Part II of the 1995 Act and marked accordingly must ensure that the vessel is marked conspicuously with its name or other means of identification and harbour of origin (if any).

Abandonment of vessels prohibited

31.—(1) A person must not abandon a vessel on the banks or shore of the estuary.

(2) For the purposes of sub-paragraph (1), a person who leaves a vessel on the banks or shore of the estuary in such circumstances or for such period that the person may reasonably be assumed to have abandoned it, is deemed to have abandoned it there unless the contrary intention is shown.

Water-skiing, aquaplaning and similar activities

32.—(1) A person must not engage or take part in water-skiing, aquaplaning or any similar activity in the main channels.

(2) Without prejudice to sub-paragraph (1), a person must not engage or take part within the estuary in water-skiing, aquaplaning or any similar activity except—

- (a) with the written permission of the harbour master given either specifically or generally,

(4) 1971 c. 60.

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- (b) only in such areas as may be designated by the conservancy authority, and
- (c) in accordance with such reasonable terms and conditions as the harbour master may specify.

(3) A master of a vessel, whilst using the vessel for the purpose of towing a water-skier or a person aquaplaning, must have on board at least one other person capable of taking charge of the vessel and of giving such assistance as may be reasonably required during the towing and in the recovery of the water-skier or person aquaplaning and must carry—

- (a) for each person on board or being towed a life jacket or a personal buoyancy aid,
- (b) two hand-held distress signals and a fire extinguisher, and
- (c) for each person water-skiing or aquaplaning, a rescue quoit with line or other sufficient hand-thrown rescue device.

Parakiting, parascending and similar activities

33. A person must not engage or take part in parakiting, parascending or any similar activity in any part of the estuary except—

- (a) with the written permission of the harbour master given either specifically or generally,
- (b) only in such areas as may be designated by the conservancy authority, and
- (c) in accordance with such reasonable terms and conditions as the harbour master may specify.

Diving and underwater swimming

34.—(1) Subject to sub-paragraph (2), a person, other than a duly authorised employee, contractor or agent of the conservancy authority, must not swim underwater or dive in the channels without the written permission of the harbour master.

(2) Sub-paragraph (1) does not apply to persons swimming underwater or diving for the purposes of undertaking repairs to recreational vessels or clearing obstructions to recreational vessels and their anchors.

(3) Subject to sub-paragraph (4), the conservancy authority may only give permission to dive and swim underwater under sub-paragraph (1) to a person who is—

- (a) a member of a club or association which is either—
 - (i) a registered branch of the British Sub-Aqua Club,
 - (ii) a registered club of the Sub-Aqua Association,
 - (iii) a Professional Association of Diving Instructors registered diving school, or
- (b) a member of any other recognised and competent organisation.

(4) Permission for the purposes of sub-paragraph (1) may be given by the conservancy authority to a club or association mentioned in sub-paragraph (3) for the benefit of those of its members specified in the permission.

(5) Any permission granted under sub-paragraph (1) may be given subject to such reasonable terms and conditions, including as to the payment of charges, as the harbour master may consider appropriate.

(6) Any person diving or swimming underwater in the channels must comply with—

- (a) any terms and conditions that are imposed on that person, and
- (b) any directions given to that person,

by the harbour master.

Regattas, races and similar events

35.—(1) The person responsible for organising any regatta, race, procession, pageant or any other similar event, or any part of any such event in which a number of vessels is expected to participate or to assemble within the estuary, must—

- (a) supply to the harbour master such information with regard to the event as the harbour master may reasonably require,
- (b) seek the prior consent of the harbour master to the holding of the event or the part of such event within the estuary, which consent must not be unreasonably withheld.

(2) A person must not organise or conduct any of the events referred to in sub-paragraph (1) except—

- (a) on such courses,
- (b) at such times, and
- (c) in accordance with such other conditions,

as the harbour master may reasonably specify for the purposes of this paragraph.

Aids to navigation

36.—(1) A person must not—

- (a) erect,
- (b) exhibit,
- (c) alter,
- (d) tamper with, or
- (e) remove,

any of the items mentioned in sub-paragraph (2) without the written permission of the conservancy authority.

(2) The items referred to in sub-paragraph (1) include any—

- (a) light,
- (b) fog signal,
- (c) buoy,
- (d) beacon,
- (e) mark,
- (f) radar reflector, or
- (g) other object,

within or adjoining the estuary which is used as an aid to navigation in the estuary.

Assistance to fire and other services

37. The master of a vessel must give every reasonable facility and assistance to the fire, police, ambulance and other emergency services for dealing with, alleviating or preventing any emergency.
Fire precautions

38. The master of a vessel must take all reasonable precautions for the prevention of accidental fire or accidents by fire.

Obstruction of officers of the conservancy authority

39. A person must not intentionally obstruct any officer or employee of the conservancy authority in the execution of that officer's or employee's duties.

Firearms

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40.—(1) Except with the prior consent of the harbour master, a firearm or air-gun must not be discharged from any vessel within the estuary otherwise than by—

- (a) a member of a police force, or
- (b) a member of Her Majesty's naval or military forces,

properly authorised to do so in the course of that member's duty.

(2) A ship's gun on board any vessel lying within the estuary must not be loaded, except in so far as may be necessary from time to time for training personnel in the loading and unloading of the gun or for testing its mechanism.

(3) The gun mentioned in sub-paragraph (2) must not be discharged except as a signal of distress.
Silencers

41. A person, being the master of a vessel propelled by an internal combustion engine, must not use that vessel in the estuary unless the engine is fitted with apparatus suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of the exhaust gases from the engine.

Penalties

42.—(1) Any person who contravenes or otherwise fails to comply with any of the provisions of this Schedule, or any condition, requirement or prohibition imposed by the conservancy authority or the harbour master in the exercise of the powers conferred upon the authority or harbour master by this Schedule, is guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph 26 (vessels not to be fumigated without permission);
- (b) to a fine not exceeding level 3 on the standard scale in any other case.

(2) Where the commission by any person of an offence under this Schedule is due to the act or default of some other person, that other person is guilty of an offence.

(3) The other person referred to in sub-paragraph (2) may be charged with, and convicted of, the offence by virtue of this paragraph, whether or not proceedings for the offence are taken against any other person.

(4) In any proceedings for an offence under this Schedule, it is a defence for the person charged to prove—

- (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or
- (b) that the person had a reasonable excuse for the act or failure to act alleged to constitute the offence.

(5) If, in any case, the defence provided by sub-paragraph (4)(a) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged is not, without leave of the court, entitled to rely on that defence unless that person satisfies the condition set out in sub-paragraph (6).

(6) The condition referred to in sub-paragraph (5) is that within a period ending seven clear days before the hearing, the person must serve on the conservancy authority a notice in writing giving such information identifying, or assisting in the identification of, the other person as is in the possession of the person charged.

SCHEDULE 3

Article 42

PROTECTIVE PROVISIONS FOR THE COMPANY

Limitation on the conservancy authority's powers

1. The conservancy authority—

(a) must not—

- (i) erect,
- (ii) place,
- (iii) alter,
- (iv) discontinue, or
- (v) remove,

aids to navigation within the port under article 6 (aids to navigation),

(b) must not—

- (i) provide,
- (ii) place,
- (iii) lay down,
- (iv) maintain,
- (v) renew,
- (vi) use,
- (vii) have, or
- (viii) remove,

moorings, buoys or similar apparatus within the port under article 8 (moorings),

(c) must not—

- (i) deepen,
- (ii) dredge,
- (iii) scour,
- (iv) cleanse,
- (v) alter, or
- (vi) improve,

the bed, shores or channels within the port under article 10 (power to dredge), and

(d) must not—

- (i) blast rock, or
 - (ii) use, appropriate or dispose of material,
- within the port under article 10 (power to dredge),

without the consent of the company, which consent is not to be unreasonably withheld.

2. Article 26 (restriction of works and dredging) does not apply to the company—

(a) with respect to the—

- (i) construction,
- (ii) alteration,

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- (iii) renewal, or
 - (iv) extension,of works in the port, or
 - (b) with respect to the dredging of waters within the port.
3. The conservancy authority must not, without the consent of the company—
- (a) grant a licence, under article 8 (moorings), for the—
 - (i) placing,
 - (ii) laying down,
 - (iii) maintenance,
 - (iv) renewal, use, or
 - (v) having,of any mooring within the port,
 - (b) grant a works licence for the—
 - (i) construction,
 - (ii) alteration,
 - (iii) renewal, or
 - (iv) extension,of works within the port,
 - (c) grant a dredging licence for the—
 - (i) deepening of,
 - (ii) widening of,
 - (iii) dredging of,
 - (iv) taking up or collection of material from,
 - (v) the bed or foreshore within the port, or
 - (d) dispose of any materials within the port under article 29 (licence to dredge).
4. The company is not required to pay any fee under article 8 (moorings) for the—
- (a) placing,
 - (b) laying down,
 - (c) maintenance, renewal,
 - (d) use, or
 - (e) having,
- of any mooring within the port.

5.—(1) Subject to sub-paragraphs (2) and (3), any difference arising between the conservancy authority and the company in respect of the matters set out in this Schedule must be determined by an arbitrator to be agreed upon between the parties.

(2) If the parties cannot agree on an arbitrator, the arbitrator is to be appointed by the President of the Institution of Civil Engineers on the application of either party.

(3) The party making an application under sub-paragraph (2) must give notice in writing to the other party prior to making the application.

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