

SCHEDULES

SCHEDULE 7

Article 26

PROTECTION OF NAVIGATION

1. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “constructed” has a corresponding meaning;

“plans” includes sections, drawings, particulars and schedules of construction;

“specified works and operations” means so much of the authorised works as may be situated upon, across, under or over the harbour and any operations carried out under article 21 and article 22 of the Order and “specified work” and “specified operation” shall be construed accordingly;

“tidal work” means so much of any work authorised by this Order as is on, over or under tidal waters or land below the level of mean high-water springs;

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

Tidal Works

2.—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans 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, altered, replaced or re-laid in contravention of this paragraph or of any condition or restriction imposed under this paragraph—

(a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and to restore the site to its former condition or so near its former condition as is acceptable to him; or

(b) where it appears to the Secretary of State urgently necessary so to do, he may himself remove the tidal work, or part of it, and so restore the site.

(3) If at the end of 28 days from the date when notice is served on the undertaker under subparagraph (2)(a) above it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice.

(4) The Secretary of State may, if he considers it expedient, order a survey and examination of any site on which it is proposed to execute a tidal work.

Lights etc. during tidal works

3.—(1) The undertaker shall—

(a) during the whole time of the construction, alteration, replacement or re-laying of a tidal work, exhibit every night from sunset to sunrise at or near the work any such lights, and

(b) take such other steps for the prevention of danger to navigation from the construction, alteration, replacement or re-laying of a tidal work,

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as Trinity House may direct.

(2) If the undertaker fails to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Damage etc. to works

4.—(1) In case of damage to or destruction or decay of a tidal work, or any part of a tidal work, the undertaker shall as soon as reasonably practicable—

- (a) give notice to Trinity House and the Queen’s Harbour Master, and
- (b) lay down such bouys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may direct.

(2) If the undertaker fails to notify Trinity House or the Queen’s Harbour Master as required by this paragraph or to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Abandonment etc. of structures

5.—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the undertaker at its own expense—

- (a) to repair and restore the work, or any part of it, or
- (b) to remove the work and restore the site to its former condition or so near its former condition as is acceptable to him.

(2) Where—

- (a) a work erected under this Order part of which is a tidal work is abandoned or allowed to fall into decay, and
- (b) the part of the work on or over land above the level of mean high-water springs is in such a condition as to interfere, or cause reasonable apprehension that it may interfere, with the right of navigation or any public rights over the foreshore,

the Secretary of State may include that part of the work, or any portion of it, in any notice under sub-paragraph (1) above.

(3) If at the end of the period of 28 days from the date when notice is served on the undertaker under sub-paragraph (1) above it 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, the Secretary of State may execute the works specified in the notice.

Surveys etc.

6. The Secretary of State may, if he considers it expedient, order a survey and examination of any tidal work.

Permanent lights etc.

7.—(1) The undertaker shall—

- (a) exhibit at the outer extremity of a tidal work every night from sunset to sunrise such lights, and
- (b) take such other steps for the prevention of danger to navigation from a tidal work,

as Trinity House may direct.

(2) If the undertaker fails to comply in any respect with a direction given under this paragraph it shall be guilty of an offence.

Offences

8.—(1) Where the undertaker is guilty of an offence under paragraphs 3, 4, or 7 above it shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) In proceedings for any such offence it shall be a defence for the undertaker to show that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) If in any case the defence provided by sub-paragraph (2) above involves the allegation that the commission of the offence was due to the act or default of another person, the undertaker shall not, without the leave of the court, be entitled to rely on the defence unless, not later than 7 days before the hearing of the proceedings, it has served on the prosecution a notice in writing giving such information as was then in its possession identifying or assisting in the identification of the other person.

Expenses

9. The Secretary of State shall be entitled to recover from the undertaker any expenditure incurred by him under paragraphs 2(2)(b) or (3) or 5(3) above or on a survey and examination under paragraphs 2(4) or 6 above.

As to Queen's Harbour Master

10.—(1) The undertaker shall, before commencing any specified work or operation, supply to the Queen's Harbour Master proper and sufficient plans of the works or operation for his reasonable approval and shall not commence the same until such plans have been approved in writing by the Queen's Harbour Master, or, in the event of dispute, settled pursuant to paragraph 15.

(2) In considering plans for approval under this paragraph, the Queen's Harbour Master shall have regard not only to the interests of navigation but also to the desirability of facilitating the construction of the specified works and operations notwithstanding that they interfere with navigation, taking into account for this purpose that those works and operations will enable the provision of a public project for which statutory authority has been given.

(3) The approval of the Queen's Harbour Master under this paragraph shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions including conditions requiring the undertaker to vacate the tunnel area in whole or in part upon a direction being given to that effect by the Queen's Harbour Master in an emergency or otherwise for naval operational requirements where it is not reasonably practical for those requirements otherwise to be met.

(4) If, within 56 days after plans have been supplied to the Queen's Harbour Master under this paragraph, the Queen's Harbour Master has not intimated his approval or his disapproval thereof and the grounds of his disapproval, he shall be deemed to have disapproved them.

11. Without prejudice to any conditions attached to an approval by the Queen's Harbour Master under paragraph 10 above but subject to the provisions of article 22 any specified work or operation shall be so constructed or carried out as to ensure that traffic in the harbour is not interfered with more than is reasonably necessary and that at all times an unobstructed main navigation channel for the safe passage of vessels is maintained and kept dredged by the undertaker to such depth as the Queen's Harbour Master may reasonably require and to a width of not less than 120 metres.

12.—(1) Notwithstanding anything in this Order but subject to paragraph (2), the whole of the harbour shall remain subject to the powers of the Queen's Harbour Master.

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(2) Anything done pursuant to an approval given under paragraph 10 shall be treated as complying with the provisions of the Dockyard Port of Portsmouth Order 1978⁽¹⁾ and in so far as it would otherwise require a licence or consent from the Queen's Harbour Master under that Order shall be deemed to have been duly licensed or consented to pursuant to that Order.

13. The Undertaker shall—

- (a) at all times afford reasonable facilities to the Queen's Harbour Master for access to the specified works and operations during their construction; and
- (b) supply the Queen's Harbour Master with all such information as he may reasonably require with regard to the specified works or the method of their execution.

14.—(1) The Queen's Harbour Master may recover from the undertaker any expenses (including a proper proportion of the overhead charges of the Queen's Harbour Master) which he may incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any specified work or operations;
- (b) by reason of any act or omission of the undertaker or of any person in their employ, or of their contractors or workmen whilst engaged upon any specified work or operation;
- (c) in dredging away any accumulation or silt consequent upon the execution or maintenance of any specified work or operation;

and the undertaker shall indemnify the Queen's Harbour Master from and against all claims and demands arising out of such construction or carrying out, act or omission and the fact that any act or thing may have been done by the Queen's Harbour Master on behalf of the undertaker or in accordance with plans approved by the Queen's Harbour Master or in accordance with any requirement of the Queen's Harbour Master or under his supervision shall not (if it was done without negligence on the part of the Queen's Harbour Master or of any person in his employ or of his contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) The Queen's Harbour Master shall give to the undertaker reasonable notice for any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

15. Any difference arising between the undertaker and the Queen's Harbour Master under this paragraph (other than a difference as to its meaning or construction) shall be referred to and settled by the Secretary of State.

16. The provisions of paragraphs 10 to 15 shall have effect unless otherwise agreed in writing between the undertaker and the Queen's Harbour Master.

Saving

17. Nothing in this Schedule shall prejudice or derogate from the powers, rights and privileges of Trinity House.

(1) [S.I. 1978/1881](#).