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STATUTORY INSTRUMENTS

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**2010 No. 2020**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010**

*Made* - - - - *6th August 2010*

*Coming into force* - - *1st September 2010*

First Corporate Shipping Limited has applied for a harbour revision order under section 14 of the Harbours Act 1964(1) and in accordance with section 7(5) of the Pilotage Act 1987(2);

Objections to the making of the Order were received and have now been withdrawn and the Secretary of State is satisfied as mentioned in section 14(2)(b) of the Harbours Act 1964;

The Secretary of State (being the appropriate Minister under section 14(7) of that Act(3)), in exercise of the powers conferred by that section and now vested in the Secretary of State, makes the following Order—

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1.—(1) This Order may be cited as the Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 and shall come into force on 1st September 2010.

(2) The Bristol Dock Acts and Orders 1848 to 1993 and this Order may be cited together as the Bristol Dock Acts and Orders 1848 to 2010.

**Interpretation**

2.—(1) In this Order—

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- (1) 1964 c. 40. Section 14 was amended by the Transport Act 1981 (c. 56), sections 18 and 40, Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12, Part 2; the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3 paragraph 1; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9; S.I. 2006/1177, regulation 2 and Part 1 of the Schedule; and S.I. 2009/1941, article 2 and Schedule 1, paragraph 12.
- (2) 1987 c. 21.
- (3) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(4) as incorporated with the Bristol Dock Acts and Orders 1848 to 1993;

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1993 Order” means the Port of Bristol Harbour Revision Order 1993(6);

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(7);

“AOD” means above Ordnance Datum (Newlyn);

“added pilotage area” means the area described in Schedule 5 (extension of limits of jurisdiction for purposes of pilotage);

“Chart Datum” in relation to any depth of dredging is 6.5 metres below Ordnance Datum (Newlyn);

“the Company” means First Corporate Shipping Limited, a company limited by shares and incorporated under the Companies Act 1985(8), whose registered number is 2542406;

“construction” includes execution and placing and, in its application to works which include or comprise any operation, means the carrying out of that operation but does not include maintenance dredging, and “construct” and “constructed” shall be construed accordingly;

“the deposited plans” and “the deposited sections” mean, respectively, the plans and sections certified by the Secretary of State as the plans and sections for the purposes of this Order;

“the designated harbour” means the area within which the Company had jurisdiction as harbour authority pursuant to article 3 of the 1993 Order immediately before the coming into force of this Order;

“harbour master” means any person appointed as such by the Company under section 51 of the 1847 Act;

“level of high water” means the level of mean high-water springs;

“Lighthouse” means the disused lighthouse situated at the seaward limit of the North Pier;

“limits of construction activity” means the limits of construction activity shown on sheet 10 of the deposited plans;

“limits of deviation” means the limits of deviation for Works Nos. 1 to 6 shown on the deposited plans;

“limits of deviation for dredging” means the limits of deviation for the operations authorised by article 5 (power to dredge the Severn Estuary) and shown marked “LODD” on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

“maintenance dredging” means any dredging operations carried out under article 5 (power to dredge the Severn Estuary) in order to maintain the areas referred to in Schedule 3 (dredging works) to their respective depths, widths and positions as set out in that Schedule;

“tidal work” means so much of the works as is on, under or over tidal waters or tidal lands below the level of high water but excluding any operations authorised by article 5 (power to dredge the Severn Estuary) and excluding the projection over waters by booms, cranes and similar plant and machinery operating within the designated harbour;

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(4) 1847 c. 27 (10 & 11 Vict.).

(5) 1990 c. 8.

(6) S.I. 1993/2974.

(7) S.I. 1995/418 to which there have been amendments not relevant to this Order.

(8) 1985 c. 6.

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

“undertaking” means the harbour undertaking of the Company from time to time, including all real and personal property and works acquired, appropriated or provided by the Company for that purpose;

“vessel” means every description of vessel, however propelled or moved, and includes non-displacement craft, a hovercraft (within the meaning of the Hovercraft Act 1968(9)), a hydrofoil vessel and any other thing constructed or used to carry or propel persons or goods by or across water;

“works” means the works and operations authorised by this Order, or any part of such works.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) In this Order, references to named breakwaters or piers, or other points, places, structures and apparatus are references to those so named on the Admiralty Chart for the Port of Bristol (No. 1859).

(4) In this Order—

- (a) any reference to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order;
- (b) map reference points specified shall be construed as references to Ordnance Survey National Grid reference points; and
- (c) longitude and latitude are stated by reference to the World Geodetic System (WGS84) Datum.

(5) References in the Bristol Dock Acts and Orders 1848 to 1993 to the undertaking of the Company shall be construed for all purposes as including references to any works carried out and any lands reclaimed by or on behalf of the Company or any of its subsidiaries under or by virtue of this Order.

## PART 2

### WORKS

#### **Power to construct, etc., works**

3.—(1) The Company may, in the lines and situations and on the lands delineated on the deposited plans and within the limits of deviation and according to the levels shown on the deposited sections, construct, operate and maintain the whole or any part or parts of the works set out in Schedule 1(works) on and in the bed and foreshore of the River Severn.

(2) Notwithstanding anything in any other enactment, the Company may for the purpose of constructing the works dismantle, remove, deal with and dispose of the whole or any part or parts of all structures, pipelines and equipment lying within the limits of deviation (including the disused Oil Jetty and the Lighthouse) and any public rights over the same are extinguished.

(3) The Company may from time to time, within the limits of deviation, alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works and may maintain and use the same as altered, enlarged, replaced, relayed, extended or reconstructed.

(4) The powers conferred by this article are subject to the restrictions set out in Schedule 2 (restrictions on works).

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(9) 1968 c. 59.

- (5) The Company may authorise any person to carry out the works.

### **Subsidiary works**

4.—(1) The Company may from time to time within the limits of deviation provide, construct, maintain and operate such dock facilities, together with works ancillary to those facilities, as may be necessary or convenient for the purposes of, or in connection with, the construction and maintenance of the works authorised by article 3 or the operation of the undertaking, and for this purpose the Company may construct, maintain and operate (whether temporarily or permanently) pumps, conduits, pipes, manifolds, hydrants, wires, drains, sewage and other treatment plants, mains, cables, substations, telecommunications equipment and other utilities plant, conveyors, cranes, lifts, hoists, container and other cargo handling and haulage equipment and stagings, rail mounted gantries, rubber tyred gantries, vessel power supply facilities, weighbridges, stairs, ladders, stagings, quays, berths, jetties, piers, approaches, catwalks, platforms, pontoons and gangways, buildings, sheds, silos, tanks, offices, workshops, depots, vehicle parking, holding and loading areas, roads and road improvements, road and rail crossings, service, outfall and culvert crossings, pavements, bridges, ramps, culverts, railway tracks, sidings, signals, security barriers, foundations, walls, bunds, fences, gates, paving and surfacing, equipment, machinery, appliances, dredged material washing, grading and weighing facilities, lights and lighting columns, signage, radio masts, CCTV cameras and masts, security installations, navigation signals, marks and lights, and such other port, harbour, dock, wharf or terminal facilities and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the Company may within the limits of deviation provide, construct, maintain and use such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance and use of the works, including—

- (a) within the limits of deviation for Works Nos. 1, 2 and 3 works for the accommodation or convenience of vessels (including but not limited to berthing heads, mooring posts, ladders, buoys, bollards, dolphins, fenders, rubbing strips and fender panels, fender units and pontoons);
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, pipelines, conduits, cables, electrical substations and electrical lines; and
- (c) landscaping, habitat creation and other works to mitigate any adverse effect of the construction, maintenance and operation of the works or to benefit or protect any person or premises affected by the construction, maintenance and operation of the works.

(3) For the purpose of, or in connection with, the construction, maintenance and use of the works the Company may—

- (a) carry out, within the limits of construction activity and the limits of deviation for dredging and within the areas within which the dredging works authorised by article 5 (power to dredge the Severn Estuary) are authorised to be carried out, such construction activity as may be necessary or expedient, including the temporary placing of materials, plant and equipment and the construction of temporary bunds, accesses, jetties, lighting and pipelines within those areas and the water adjoining those areas;
- (b) within the limits of construction activity alter and refurbish the Graving Dock to create pre-casting facilities and facilities for the manufacture of caissons (including the temporary installation and use of hoists, crawler cranes and tower cranes) and construct, maintain and operate temporary construction compounds with concrete batching and aggregate plants, workshops, offices, laboratories and stores, laydown areas, temporary stockpiles and areas for storage of construction materials, plant and equipment, sites for the stationing of caravans for use for the temporary residential accommodation of construction workers and temporary offices, welfare facilities, waste and recycling facilities, foul drainage and sewage treatment facilities and other utilities plant and equipment and vehicle parking;

- (c) within the limits of construction activity dismantle, demolish and remove existing oil, kerosene, spirit, molasses, derv and other associated pipelines and construct and install new pipelines in replacement together with all associated manifolds and other equipment, stanchions, supports, bunds and pipebridges; and
- (d) within the limits of deviation for dredging and within the areas within which the dredging works authorised by article 5 are authorised to be carried out and within the water adjoining those areas, construct, maintain and use temporary pipelines (including pontoons and booster pumps) on, under or over the surface of the River Severn for the purpose of conveying dredged material from the site of the dredging works authorised by article 5 to the site of Works Nos. 1 to 6.

(4) The Company may from time to time in connection with the construction, maintenance and use of the works abstract, impound and use water from the River Severn, the River Avon and the sea and may discharge surface water into the River Severn and the River Avon, but nothing in this Order authorises the entry into controlled waters of any matters whose entry or discharge into controlled waters is prohibited by section 85 of the Water Resources Act 1991<sup>(10)</sup>.

(5) The powers conferred by this article are subject to the restrictions set out in Schedule 2 (restrictions on works).

### **Power to dredge the Severn Estuary**

5.—(1) The Company may deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the River Severn to the extent described in Schedule 3 (dredging works) or as may be required for the purpose of maintaining the works described in that Schedule to enable uninterrupted means of access to the works by vessels and enabling the use of the works at all states of the tide.

(2) The power to dredge described in Schedule 3 includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged areas against siltation, scouring or collapse.

(3) Any materials dredged, taken or collected by the Company in the exercise of the powers of this article (other than wreck within the meaning of Part 9 of the Merchant Shipping Act 1995<sup>(11)</sup>) shall be the property of the Company and may be used, sold, deposited or otherwise disposed of as the Company thinks fit.

(4) No materials referred to in this article shall—

- (a) be disposed of in contravention of the provisions of any enactment relating to the disposal of waste; or
- (b) be deposited below the level of high water except within the designated harbour for the purposes of constructing the works or otherwise in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State pursuant to Part 2 of the Food and Environment Protection Act 1985<sup>(12)</sup>.

### **Power to deviate**

6.—(1) In constructing and maintaining the works authorised by article 3(1) (power to construct, etc., works) and in exercising the powers conferred by article 5(1) (power to dredge the Severn Estuary), the Company may deviate laterally from the lines or situations of those works shown on the deposited plans to the extent of the limits of deviation or, for works authorised by article 5(1), to any extent not exceeding the limits of deviation for dredging.

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<sup>(10)</sup> 1991 c. 57. Section 85 is amended by S.I. 2007/3538, regulations 73 and 74, Schedule 21, Part 1 paragraph 21 and Schedule 23; and S.I. 2009/1799, regulation 28(1) and Schedule 2, paragraph 2.

<sup>(11)</sup> 1995 c. 21.

<sup>(12)</sup> 1985 c. 48.

(2) In constructing and maintaining the works authorised by article 3(1) the Company may deviate vertically from the levels of those works shown on the deposited sections to any extent downwards and up to three metres upwards as may be necessary or convenient.

(3) In exercising the powers conferred by article 5(1) the Company may deviate vertically to any extent upwards and up to 0.3 metres downwards as may be necessary or convenient.

### **Period for completion of works**

7.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may, on the application of the Company, allow then, on the expiration of that period, or such extended time (as the case may be), the powers conferred by this Order to the Company for constructing the works shall cease except as to so much of them as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 3 (power to construct, etc., works) or article 4 (subsidiary works), or to any maintenance dredging.

### **Works to be within the district of The City of Bristol**

8.—(1) During the period beginning with the date on which this Order comes into force and ending on the accretion date, the area within the limits of deviation shall, to the extent that it is outside the area of The City of Bristol for the purposes of the Control of Pollution Act 1974(13) and the 1990 Act, be annexed to and incorporated with the district of The City of Bristol.

(2) On the accretion date, the area of the whole or so much of the works authorised by article 3 (power to construct, etc., works) and article 4 (subsidiary works) as shall have been completed or substantially completed shall, to the extent that they are outside the area of The City of Bristol, be annexed to and incorporated within the district of The City of Bristol.

(3) In this article, “accretion date” means whichever of the following dates first occurs—

- (a) the date when the works referred to in paragraph 2 have been completed; or
- (b) the date when the powers conferred by this Order cease to have effect pursuant to article 7 (period for completion of works).

(4) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(14) until the Company has certified in writing to the Director General of Ordnance Survey that the works have been completed.

### **Obstruction of works**

9. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of the Company in constructing, maintaining or using the works; or
- (b) interferes with, moves or removes any equipment used in connection with the construction, maintenance or use of the works,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(13) 1974 c. 40.

(14) 1841 c. 30.

### **Tidal works not to be executed without approval of Secretary of State**

**10.**—(1) Unless construction has commenced within five years of the coming into force of this Order, a tidal work shall not be constructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed in contravention of paragraph (1), the Secretary of State may—

- (a) give notice to the Company to remove the tidal work or any part of it and to restore the site of that tidal work to its former condition; or
- (b) where necessary remove the tidal work or any part of it and restore the site of that tidal work to its former condition.

(3) Notice given under paragraph (2)(a) shall be in writing and shall be served on the Company, and such service may be effected by transmission to an electronic address and in an electronic form specified by the Company.

(4) If, within 30 days of service of notice given under paragraph (2)(a), the Company has failed to comply with the notice, the Secretary of State may—

- (a) execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work or part of it and restore the site to its former condition.

(5) Any expenditure incurred by the Secretary of State pursuant to paragraphs (2) to (4) shall be recoverable from the Company.

### **Provision against danger to navigation**

**11.**—(1) In case of injury to, or destruction or decay of, a tidal work or any part of it, the Company shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If, without reasonable excuse, the Company fails to notify Trinity House as required by paragraph (1), or to comply in any respect with a direction given under that paragraph, the Company shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.

### **Abatement of works abandoned or decayed**

**12.**—(1) Where a tidal work is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part of it, or to remove the work and restore its site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting—

- (a) partly of a tidal work; and
- (b) partly of works on or over land above the level of high water,

is abandoned or suffered to fall into decay and the works mentioned in sub-paragraph (b) are in such condition as to interfere or to cause reasonable apprehension that they may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include those works, or any portion of those works, in any notice under paragraph (1).

(3) If, at the end of 30 days beginning with the date on which a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State

may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

#### **Survey of tidal works**

**13.** The Secretary of State may at any time, if the Secretary of State deems it expedient to do so, order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

#### **Permanent lights on tidal works**

**14.—(1)** After the completion of a tidal work the Company shall, at the outer extremity of such work, exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under paragraph (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.

#### **Lights on tidal works during construction, etc.**

**15.—(1)** The Company shall, at or near a tidal work, during the whole time of the construction, extension, enlargement, alteration, replacement or re-laying of such work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under paragraph (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine.

#### **Application of permitted development rights**

**16.** Schedule 4 shall have effect.

## **PART 3**

### **JURISDICTION**

#### **Extension of limits of jurisdiction for the purposes of pilotage**

**17.—(1)** The limits within which the Company shall have jurisdiction for the purposes of pilotage under Part 1 of the Pilotage Act 1987(15) shall include (in addition to the designated harbour) the added pilotage area.

(2) Schedule 5 shall have effect.



## PART 4

### PROTECTIVE PROVISIONS

#### **Crown rights**

**18.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Company to take, use, enter upon or in any manner interfere with any land, hereditaments or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a Government Department, or held in trust for Her Majesty for the purposes of a Government Department, without the consent in writing of that Government Department.

(2) A consent under paragraph (1) may be given unconditionally or subject to such terms and conditions as may be considered necessary or appropriate.

#### **Saving for Trinity House**

**19.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

#### **For the protection of the Environment Agency**

**20.** Schedule 6 shall have effect.

#### **For the protection of the Historic Environment**

**21.** Schedule 7 shall have effect.

#### **For the protection of the Highways Agency**

**22.** Schedule 8 shall have effect.

## PART 5

### MISCELLANEOUS AND GENERAL

#### **Works to form part of the undertaking**

**23.**—(1) The works and the bed, banks and shores of the River Severn on which the works are constructed and any lands reclaimed or acquired by the Company for the purpose of the works shall for all purposes form part of the Avonmouth Docks of the Company and of the undertaking.

(2) All enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Company or its officers, and all byelaws for the time being in force in relation to the Avonmouth Docks of the Company and in relation to the undertaking, shall so far as relevant, apply to the works and such bed, banks, shores and lands and may be enforced by the Company accordingly.

(3) Nothing in this Order shall affect the operation within the designated harbour of such of the provisions of the 1847 Act as immediately before the coming into force of this Order were operative within the designated harbour and those provisions shall extend to and apply to the works.

### **Application of byelaws**

**24.**—(1) The Bristol Port General Byelaws 2005 apply, subject to paragraph (2), to the designated harbour as they applied to the designated harbour immediately before the coming into force of this Order, and nothing in this Order shall affect the right of the Company to enforce the byelaws or to amend or revoke them.

(2) In the Bristol Port General Byelaws 2005 as applied by paragraph (1), references to the “harbour premises” shall be construed so as to include the works.

(3) In this article “the Bristol Port General Byelaws 2005” means the byelaws made by the Company on 25 November 2005 and confirmed by the Secretary of State on 1 December 2005<sup>(16)</sup>.

### **Power to appropriate**

**25.**—(1) Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the Company may from time to time set apart or appropriate the whole or any part or parts of the lands, quays, berths, buildings, facilities, machinery or equipment comprised within Works Nos. 1 to 6 or upon which Works Nos. 1 to 6 are constructed and maintained for the exclusive, partial or preferential use and accommodation of any particular trade, person, activity, vessel or goods or any class of trade, person, activity, vessel or goods, subject to the payment of such charges and subject to such terms and conditions and regulations as the Company may think fit.

(2) No person or vessel shall make any use of any lands, quays, berths, buildings, facilities, machinery or equipment set apart or appropriated under this article without the consent of the harbour master or other duly authorised officer of the Company and the harbour master or such officer may order any person or vessel making use of such lands, quays, berths, buildings, facilities, machinery and equipment without such consent to be removed.

(3) The provisions of section 58 (powers of the harbour master as to the mooring of vessels) of the 1847 Act shall extend and apply to any such vessel.

### **Defence to proceedings in respect of statutory nuisance**

**26.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(17)</sup> (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine shall be imposed, under section 82(2) of that Act<sup>(18)</sup> if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or

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<sup>(16)</sup> A copy of the byelaws may be obtained from The Bristol Port Company at St Andrew’s House, St Andrew’s Road, Avonmouth, Bristol BS11 9DQ.

<sup>(17)</sup> 1990 c. 43. Section 82(1) is amended by the Environment Act 1995 (c. 25), section 107 and Schedule 17, paragraph 6.

<sup>(18)</sup> Section 82(2) is amended by the Noise and Statutory Nuisance Act 1993 (c. 40), section 5 and by the Environment Act 1995, section 107 and Schedule 17, paragraph 6.

- (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.
- (2) The following provisions of the Control of Pollution Act 1974—
  - (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
  - (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded)(19),

shall not apply where the consent relates to the use of premises by the Company for the purposes of, or in connection with, the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works.

### **Defence of due diligence**

27.—(1) In proceedings for an offence under any provision of this Order it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

### **Certification of plans**

28. The Company shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are true copies of, respectively, the deposited plans and the deposited sections referred to in this Order, and a document so certified shall be admissible in any proceedings, as evidence of the contents of the document of which it is a copy.

Signed by authority of the Secretary of State for Transport

6th August 2010

*Richard Bennett*  
Head of Ports Division  
Department for Transport

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(19) Sections 61(9) and 65(8) are amended by the Environment Act 1995 (c. 25), section 120 and Schedule 24 and the Environmental Protection Act 1990 (c. 43) section 162 and Schedule 15, paragraph 15.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE 1

Articles 2 and 3(1)

## WORKS

1. In this Schedule “Point” means the relevant point shown on the deposited plans, the map reference of which is set out below.

| Point | Eastings | Northings |
|-------|----------|-----------|
| 1A    | 350222   | 179048    |
| 1B    | 350373   | 178930    |
| 1C    | 350499   | 178973    |
| 1D    | 350701   | 179254    |
| 1E    | 350840   | 179544    |
| 1F    | 351058   | 179769    |
| 1G    | 351324   | 179833    |
| 1H    | 351174   | 179916    |
| 1I    | 351217   | 180037    |
| 1J    | 350933   | 180294    |
| 1K    | 350901   | 180310    |
| 1L    | 350266   | 179103    |
| 2A    | 350547   | 178823    |
| 2B    | 350612   | 178885    |
| 2C    | 350692   | 178862    |
| 2D    | 351186   | 179801    |
| 3A    | 350222   | 179048    |
| 3B    | 350240   | 179071    |
| 3C    | 349902   | 179508    |
| 3D    | 349953   | 179518    |
| 4A    | 351711   | 179994    |
| 4B    | 351720   | 179981    |
| 5A    | 350570   | 178927    |
| 5B    | 350768   | 178834    |
| 5C    | 351089   | 179428    |
| 5D    | 351154   | 179403    |
| 5E    | 351228   | 179543    |
| 5F    | 350966   | 179677    |
| 6A    | 350966   | 179677    |

|    |        |        |
|----|--------|--------|
| 6B | 351228 | 179543 |
| 6C | 351338 | 179754 |
| 6D | 351411 | 179759 |
| 6E | 351288 | 179834 |

2. The works referred to in article 3(1) are as follows.

*Work No. 1:* the following works for the construction of new port facilities and infrastructure—

- (a) demolition of any structures, including jetties and berthing structures;
- (b) reclamation of the foreshore and bed of the River Severn and the filling of land;
- (c) construction of a new quay with concrete deck, berths and associated fendering (the new quay may be of a solid construction with a caisson quay wall or of a semi-open construction with bearing piles) and with, beneath the quay, a rock armour embankment or bund on the bed of the River Severn;
- (d) a combi-piled wall connecting the new quay to the North Pier and to Work No. 3;
- (e) at the northernmost end of the new quay, construction of a rock armour embankment or bund on the bed of the River Severn;
- (f) laying of port surfacing and other infrastructure and above ground works, the installation of ship to shore gantry cranes, rail mounted gantry cranes and associated piling, ground beams and crane rails and other works including a container yard, container stacks and other associated storage areas; and
- (g) construction and installation of offices, warehouses, workshops and other buildings and supporting facilities, access roads, drainage (including outfalls and interceptors) and other services associated with such works,

this work to be constructed within the area bounded by a line commencing at Point 1A and passing south-eastwards to Point 1B on the outer face of the North Pier then turning and passing generally north-eastwards across the North Pier and along the existing shoreline through Point 1C, Point 1D, Point 1E, Point 1F and Point 2D to terminate at Point 1G then turning and passing westwards to Point 1H then northwards to Point 1I then north-westwards to Point 1J and then west-north-westwards to Point 1K and then turning and passing generally south-westwards through Point 1L to terminate at Point 1A, as shown on sheet 5 of the deposited plans.

*Work No. 2:* the following works for the construction of new port facilities and infrastructure—

- (a) demolition of any bunds, buildings and other structures;
- (b) filling of land;
- (c) laying of port surfacing and other infrastructure and above ground works, the installation of rail mounted gantry cranes and associated piling, ground beams and crane rails and other works including a container yard, container stacks and other associated storage areas; and
- (d) construction and installation of offices, warehouses, workshops and other buildings and supporting facilities, access roads, drainage (including outfalls and interceptors) and other services associated with such works,

this work to be constructed within the area bounded by a line commencing at Point 1B and running south-eastwards along the outer face of the North Pier to Point 2A then turning and passing north-eastwards around the north-eastern end of the Graving Dock to Point 2B then south-eastwards to Point 2C then turning and passing north-eastwards to point 2D on

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the existing shoreline then turning and passing generally south-westwards along the existing shoreline and the boundary of Work No. 1 through Point 1F, Point 1E, Point 1D and Point 1C to terminate at Point 1B, as shown on sheet 5 of the deposited plans.

*Work No. 3:* a curved breakwater 619 metres in length on its outer face and 575 metres long on its inner face extending into the River Severn in a generally north-westerly and then northerly direction along a line commencing at the south-western end of Work No. 1 at Point 3A and passing in an arc in a generally north-westwards and then northwards direction to Point 3C then turning and passing in a generally eastwards direction to Point 3D then turning and passing in an arc in a generally southwards and then south-eastwards direction to terminate on the boundary of Work No. 1 at Point 3B, as shown on sheet 6 of the deposited plans; this work will also include the laying of port surfacing and other infrastructure on the breakwater, the construction of a road along its length and the installation of access ladders, fendering and mooring bollards.

*Work No. 4:* a double track railway commencing at its south-western end by junctions with the double track railway and sidings described in Work No. 5 and extending for 740 metres in a generally north-easterly direction, through the area described in Work No. 6 for the construction of that work and then terminating with junctions with the existing railway at Point 4A and Point 4B; the railway will incorporate a cripple loop, crossovers, vehicular and pedestrian level crossings, service, culvert and outfall crossings and the work includes the construction of civils and rail works, earthworks, drainage and ducting in connection with the construction of the railway.

*Work No. 5:* the following works for the construction of new port facilities and infrastructure—

- (a) demolition of any buildings and other structures and filling of land;
- (b) construction of a rail terminal incorporating port surfacing and other infrastructure, a double track railway, railway sidings (including loading sidings, reception sidings and run-throughs and headshunts), internal access and loading roads, loading gantries, rail mounted gantry cranes and associated piling, ground beams and crane rails;
- (c) construction of vehicle reception and parking facilities and container stacks, transfer and storage yards and other associated storage areas; and
- (d) construction and installation of offices, warehouses, workshops and other buildings and supporting facilities, drainage (including interceptors) and other services associated with such works,

this work to be constructed within the area bounded by a line commencing at Point 5A, passing south-eastwards to Point 5B, turning and passing north-eastwards to Point 5C, turning and passing south-eastwards to Point 5D then north-eastwards to Point 5E then turning and passing north-westwards to Point 5F and south-westwards to terminate at Point 5A, as shown on sheet 8 of the deposited plans.

*Work No. 6:* the following works for the construction of new port facilities and infrastructure—

- (a) demolition of any buildings and other structures and filling of land;
- (b) laying of port surfacing and other infrastructure and above ground works including container stacks and other associated storage areas;
- (c) construction of vehicle reception and parking facilities;
- (d) construction of civils and rail works, earthworks, drainage and ducting in connection with Work No. 4; and

- (e) construction and installation of offices, warehouses, workshops and other buildings and supporting facilities, access roads, drainage (including outfalls and interceptors) and other services,

this work to be constructed within the area bounded by a line commencing at Point 6A on the north-eastern boundary of Work No. 5 and passing along that boundary to Point 6B then turning and passing north-eastwards to Point 6C then eastwards to Point 6D then turning and passing north-westwards to the existing shoreline then turning and passing generally westwards along the existing shoreline through Point 6E to terminate at Point 6A, as shown on sheet 9 of the deposited plans.

## SCHEDULE 2

Articles 3(4) and 4(5)

### RESTRICTIONS ON WORKS

**1.** In this Schedule—

- (a) “building” does not include any form of crane or flood lighting column or tower or communication, radar, CCTV mast, or tower or similar such structure; and
- (b) “the Terminal” means Works Nos. 1 to 6.

#### *New quay*

**2.** The face of the new quay authorised as part of Work No. 1 shall be constructed at an elevation at least 10 metres AOD.

#### *Containers and associated equipment*

**3.** Quayside container cranes may only be used in the area shown edged red on sheet 20 of the deposited plans and must not—

- (a) exceed 15 in number; or
- (b) exceed 130 metres in height (with booms up) above the constructed ground level of Work No. 1.

**4.** Container stacks in the Terminal shall not exceed a maximum height of—

- (a) 24 metres above the constructed ground levels of Works Nos. 1, 2, 5 and 6 in the area shown edged green on sheet 20 of the deposited plans; or
- (b) 15 metres above the constructed ground levels of Works Nos. 1, 2, 5 and 6 in any part of the Terminal other than the area referred to in paragraph (a).

**5.** In the Terminal, gantry cranes used for stacking or otherwise handling containers shall not exceed a maximum height of 25 metres above the constructed ground levels of Works Nos. 1, 2, 5 and 6.

#### *Other height restrictions*

**6.** No building constructed within the Terminal shall exceed a height at its eaves of 15 metres above the constructed ground level.

**7.** Security fencing and other fencing within and around the boundary of the Terminal shall not exceed 3 metres in height above the constructed ground level.

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**8.** Lighting towers within the Terminal shall not exceed 30 metres in height above the constructed ground level but this shall not prevent the use of lights on quayside container cranes and other quayside and container and general cargo handling equipment.

*Other works restrictions*

**9.** No more than 15 railway sidings shall be constructed within the limits of deviation for Work No. 5.

**10.** No pylons or overhead power supply cables may be constructed within the Terminal as part of the works.

*Restrictions on use*

**11.** Once constructed no part of the water frontage of the new quay authorised by Work No. 1 may be used other than for the berthing (including lay-by) and accommodation of vessels.

**12.** Construction plant, concrete batching and aggregate plants, temporary grading, washing and weighing plant, temporary bridges, conveyor systems, temporary accesses, temporary buildings and offices and working spaces and residential caravans are only permitted to facilitate the construction or maintenance of the works and for no other purpose and shall be removed once the use for which they were installed has ceased.

*Construction activities and mitigation*

**13.—(1)** A code of construction practice shall be submitted to and approved in writing by Bristol City Council before commencement of construction of the works, and save insofar as any requirements of the code of construction practice may be waived by any requirements imposed in a notice served under section 60 (control of noise on construction sites) or a consent under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(20)</sup>, such construction shall be carried out in accordance with the approved code of construction practice.

(2) In this paragraph “code of construction practice” means a code setting out measures to be employed in the construction of the works so as to mitigate the impact of those works, based on the measures identified in the environmental information submitted to the Secretary of State in connection with the application for this Order.

*Application of Town and Country Planning legislation*

**14.** The provisions of this Schedule shall be deemed to be conditions subject to which a planning permission was granted under section 70 of the 1990 Act<sup>(21)</sup> and, accordingly, they shall be subject to the provisions of that Act and all associated legislation and, in particular, they may be varied in their application to the works in accordance with sections 73 and 73A of the 1990 Act<sup>(22)</sup> and the Town and Country Planning (General Development Procedure) Order 1995<sup>(23)</sup>.

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(20) 1974 c. 40. Section 61 is amended by the Building Act 1984 (c. 55), section 133 and Schedule 7; the Environment Act 1995 (c. 25), section 120 and Schedule 24, and the Environmental Protection Act 1990 (c. 43), section 162 and Schedule 15 paragraph 15. There are other amendments but none is relevant.

(21) Section 70 is amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7, paragraph 14.

(22) Section 73 is amended by the Planning and Compulsory Purchase Act 2004 (c. 5), sections 42, 51 and 120 and Schedule 9, and section 73A was inserted by the Planning and Compensation Act 1991, section 32 and Schedule 7, paragraph 16.

(23) S.I. 1995/419.



## SCHEDULE 3

Article 5(1)

## DREDGING WORKS

1. In this Schedule “Point” means the relevant point shown on the deposited plans and the co-ordinates of which are set out below.

| Point | Latitude    | Longitude    |
|-------|-------------|--------------|
| D1A   | 51°30'.542N | 002°43'.187W |
| D1B   | 51°30'.503N | 002°43'.102W |
| D1C   | 51°31'.129N | 002°42'.582W |
| D1D   | 51°31'.197N | 002°42'.650W |

2. The works referred to in article 5(1) are as follows.

*Dredging Work No. 1:* an area of the River Severn for use as a berthing pocket for vessels to a maximum dredged depth of 18 metres below Chart Datum (unless the Secretary of State shall approve otherwise in writing), being the area bounded by a line commencing on the face of the new quay authorised as part of Work No. 1 at Point D1B passing in a north-eastwards direction along that face to Point D1C then turning and passing in a generally northwards or north-westwards direction to Point D1D then turning and passing in a south-westward direction to Point D1A on the inner face of the breakwater authorised by Work No. 3 then returning in a south-eastwards direction along that face to terminate at Point D1B, as shown on sheet 11 of the deposited plans.

*Dredging Work No. 2:* an area of the River Severn for use as a manoeuvring area and turning circle for vessels to a maximum dredged depth of 14 metres below Chart Datum (unless the Secretary of State shall approve otherwise in writing), being the area bounded—

- (a) to the south-east by the berthing pocket authorised to be dredged by Dredging Work No. 1;
- (b) to the south-west by the inner face of the breakwater authorised by Work No. 3;
- (c) to the west-south-west by the end of the deep water channel authorised to be dredged by Dredging Work No. 3; and
- (d) to the north-east and north-west by a line commencing at the north-western limit of such deep water channel and returning in an arc in a generally north-westwards and then westwards direction to terminate at the northernmost extremity of the berthing pocket described in sub-paragraph (a).

*Dredging Work No. 3:* to widen and deepen the existing approach channel to provide access to the works for vessels on all states of the tide, an area of the River Severn—

- (a) within the area 850 metres wide having its centre line commencing at a point at latitude 51°26'.204N, longitude 003°00'.685W and proceeding generally north-eastwards terminating at a point at latitude 51°30'.811N, longitude 002°43'.561W (shown for illustration only on sheet 12 of the deposited plans);
- (b) the resulting channel not to exceed—
  - (i) 380 metres in width at the base of the channel in the area to the west of Portishead Point; and
  - (ii) 450 metres in width at the base of the channel in the area to the east of Portishead Point; and
- (c) dredged to a maximum depth of 14 metres below Chart Datum (unless the Secretary of State shall approve otherwise in writing).

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*Dredging Work No. 4: an area of the River Severn to create a training channel—*

- (a) commencing on the northern boundary of the manoeuvring area and turning circle authorised to be dredged by Dredging Work No. 2 and extending in a generally northerly direction for 500 metres;
- (b) not exceeding 210 metres in width at the base of the channel; and
- (c) dredged to a maximum depth of 14 metres below Chart Datum (unless the Secretary of State shall approve otherwise in writing).

*Dredging Work No. 5: works ancillary to Work Nos. 1 and 3 as required—*

- (a) to create or accommodate foundations for Work No. 1 and facilitate the reclamation authorised by Work No. 1, to a maximum dredged depth of 21.5 metres below Chart Datum; and
- (b) to create or accommodate foundations for Work No. 3, at the inshore end of Work No. 3 adjacent to North Pier to a maximum dredged depth of 8 metres below Chart Datum and following the line of and falling at the offshore end of Work No. 3 to a maximum dredged depth of 12 metres below Chart Datum,

unless in each case the Secretary of State shall approve otherwise in writing.

## SCHEDULE 4

Article 16

### APPLICATION OF PERMITTED DEVELOPMENT RIGHTS

## PART 1

### Permitted development

1.—(1) In their application to the works, article 3 of, and Part 11 of Schedule 2 to, the 1995 Order<sup>(24)</sup> (which permit development authorised by a harbour revision order designating specifically both the nature of the development authorised and the land on which it may be carried out) shall have effect as if the planning permission granted by that Order were subject to the restrictions contained in Schedule 2 (restrictions on works).

(2) In their application to other development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order, article 3 of, and Part 17 of Schedule 2 to, the 1995 Order<sup>(25)</sup> shall have effect as if the planning permission granted by that Order were subject to the restrictions contained in Schedule 2.

(3) Except to the extent specified the restrictions contained in Schedule 2 do not apply to temporary construction activity.

(4) Nothing in paragraphs (1) and (2) shall affect the carrying out of any development which consists of any maintenance of the works, which (to the extent it would not otherwise be) shall be permitted development as if it were included in article 3 of, and Parts 11 and 17 of Schedule 2 to, the 1995 Order.

<sup>(24)</sup> Article 3 is amended by the Utilities Act 2000 (c. 27), section 76; S.I. 1999/293, regulations 34 and 35 and Schedule 5; S.I. 1999/1783, regulation 15; S.I. 2003/956, article 13 and Schedule 6, paragraph 3; and S.I. 2006/1282, article 16. Part 11 of Schedule 2 is amended by S.I. 1996/528, article 2.

<sup>(25)</sup> There are amendments to Part 17 of Schedule 2 but none is relevant.

## PART 2

### Habitats Regulations

2. Subject to paragraph 3 regulation 73 of the Conservation of Habitats and Species Regulations 2010<sup>(26)</sup> (the “Habitats Regulations”) shall not apply to any planning permission which relates to the works authorised by this Order and which is granted by article 3(1) of the 1995 Order for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

3. Paragraph 2 does not apply if and to the extent that the works—

- (a) do not form part of the plan or project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

### SCHEDULE 5

Article 17

#### EXTENSION OF LIMITS OF JURISDICTION FOR PURPOSES OF PILOTAGE

1. In this Schedule—

- (a) “Gloucester Harbour” means the area within which the Gloucester Harbour Trustees have authority as defined in article 11 of the Gloucester Harbour Revision (Constitution) Order 2002<sup>(27)</sup>;
- (b) “Newport Harbour” means the port or harbour of Newport as defined in section 5 of the Newport (Monmouthshire) Harbour Act 1890<sup>(28)</sup>;
- (c) “the pilotage plan” means the plan entitled “The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 - Bristol Channel Added Pilotage Area” prepared in duplicate and signed by the Head of Ports Division in the Department for Transport of which one copy has been deposited at the offices of the Secretary of State for Transport and the other at the principal office of the Company at St Andrew’s House, St Andrew’s Road, Avonmouth, Bristol BS11 9DQ;
- (d) “Port of Barry” means the limits of the docks and harbour at Barry as defined and extended by section 14(2) of the British Transport Docks Act 1972<sup>(29)</sup>;
- (e) “Port of Bridgwater” means the limits of the port of Bridgwater as established under the Bridgwater Navigation and Quays Act 1845<sup>(30)</sup>; and
- (f) “Port of Cardiff” means the limits of the docks and harbour at Cardiff as defined and extended by section 15(2) of the British Transport Docks Act 1972 and as having effect in accordance with section 17 of the Cardiff Bay Barrage Act 1993<sup>(31)</sup>.

#### *Added pilotage area*

2. The added pilotage area shall be the area shown hatched in blue on the pilotage plan, being so much of the area of the Severn Estuary as is bounded by an imaginary line commencing at Wharf

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(26) S.I. 2010/490.  
(27) S.I. 2002/3268.  
(28) 1890 c. cxliv.  
(29) 1972 c. xxxvii.  
(30) 1845 c. lxxxix.  
(31) 1993 c. 42.

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Point (latitude 51°29.9' north – longitude 002°43' west) and from there drawn along the line of mean high water springs in a generally south westerly direction along the south side of the Severn Estuary to Foreland Point (latitude 51°14.7' north – longitude 003°47' west), then straight in a northerly direction to Porthcawl Breakwater Head (latitude 51°28.4' north – longitude 003°42' west), then along the line of mean high water springs in a generally easterly direction along the north side of the Severn Estuary to a point near Magor on the South Wales coast at which the level of mean high water springs is intersected by latitude 51°33' north, then straight due east to a point on the coast of the county of Gloucester where the level of mean high water springs is intersected by latitude 51°33' north, then along the line of mean high water springs in a generally south westerly direction along the south side of the Severn Estuary to Wharf Point, not including any area within the designated harbour and not including the Port of Barry, the Port of Cardiff, Newport Harbour, Gloucester Harbour and the Port of Bridgwater.

## SCHEDULE 6

Article 20

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) Where any consent, approval or agreement is required to be given by the Agency, pursuant to this Schedule, it shall not be unreasonably withheld or delayed.

(3) In this Schedule—

“accumulation” means any accumulation of silt or other material causing damage or a reasonable expectation of damage to flood defences managed by the Agency;

“the Agency” means the Environment Agency;

“completion” in relation to any work means the date on which it is brought into use;

“damage” includes scouring and erosion and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or shore of the sea or of the bed or banks of any river;

“excluded work” means a tidal work as defined in article 2(1) and any work referred to in article 5 (power to dredge the Severn Estuary);

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“outfall” means—

(a) any existing land drainage outfall for which the Agency is responsible;

(b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

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- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
  - (c) cause obstruction to the free passage of fish or damage to any fishery; or
  - (d) affect the conservation, distribution or use of water resources; and
- “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

#### *Specified works*

2.—(1) Before beginning to construct any specified work other than an excluded work, the Company shall submit to the Agency for its approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

- (2) Any approval of the Agency required under this paragraph—
  - (a) shall be deemed to have been given if, within 42 days of the submission of the plans for approval, it is neither—
    - (i) given in writing; or
    - (ii) refused in writing (the refusal being accompanied by a statement of the grounds for refusal within 42 days of the submission of the plans for approval); and
  - (b) may be given subject to such reasonable conditions as the Agency may impose for—
    - (i) the protection of any drainage work;
    - (ii) the protection of the fishery;
    - (iii) the protection of water resources;
    - (iv) the prevention of flooding; or
    - (v) the prevention of pollution.

- 3. The conditions which the Agency may impose under paragraph 2 include—
  - (a) conditions as to the time and the manner in which any work is to be carried out; and
  - (b) conditions requiring the Company at its own expense—
    - (i) to provide or maintain means of access for the Agency;
    - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

- 4.—(1) Subject to sub-paragraph (2)—
  - (a) any specified work (other than an excluded work), and all protective works required by the Agency under paragraph 2(2)(b), shall be constructed within such period (if any) as the Agency may specify at the time when it gives its approval under paragraph 2, or may approve at any later time on application by the Company;

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- (b) any specified work (other than an excluded work) shall be constructed in accordance with the plans approved or deemed to have been approved or settled under this Schedule and in accordance with any conditions imposed under paragraph 2; and
- (c) any protective works required by the Agency under paragraph 2(2)(b) shall be constructed to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The Company shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work other than an excluded work and notice in writing of its completion not later than 7 days after its completion.

(3) If any part of a specified work (other than an excluded work) comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Schedule or (if the Company so elects and the Agency in writing consents) to remove, alter or pull down that work and, in the case of removal, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the Company, it has failed to begin taking steps to comply with the requirements of the notice and subsequently complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and may recover any expenditure reasonably incurred by it in so doing from the Company.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under sub-paragraph (3), or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

#### *Surveys and maintenance of drainage works*

5.—(1) Before commencing the construction of a specified work liable to affect a drainage work, the Company shall procure at its expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by that specified work.

(2) Subject to sub-paragraph (3), the Company shall, from the commencement of the construction of any specified work and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Company or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(3) The obligation imposed on the Company by sub-paragraph (2) does not apply where the Agency or another person other than the Company is liable to maintain the drainage work in question and is not precluded by the exercise of the powers of this Order from doing so.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Company to repair and restore that drainage work, or any part of it, or (if the Company so elects and the Agency in writing consents), to remove the drainage work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(5) If within a reasonable period, being not less than 28 days beginning with the date on which a notice under sub-paragraph (4) is served on the Company, it has failed to begin taking steps to comply with the reasonable requirements of the notice and subsequently complete them within such

reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

#### *Damage to flood defences*

6.—(1) If, during the construction of a specified work or within 10 years after the completion of any such work, there is caused or created an accumulation or erosion which causes damage to flood defences, the Company shall, if it is proven by the construction of the specified work to have caused such damage or the reasonable expectation of such damage and if so required by the Agency before or within the period of 10 years after such completion, remedy such accumulation or erosion to the extent and commensurate with the damage it is proven to have caused, in the manner specified in sub-paragraph (4), and, if it refuses or fails to do so, the Agency may itself cause work to be done and may recover the reasonable cost from the Company.

(2) Should any accumulation or erosion which causes damage to flood defences or the reasonable expectation of such damage arise within the period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion proven to have been caused by the specified works shall from time to time be remedied in accordance with sub-paragraph (1) by the Company during the period of 10 years and at any time subsequently, except 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 proven to have been caused by the specified works being caused or created.

(3) In sub-paragraphs (1) and (2), "damage" means any damage to the bed or banks of the river or any adverse effect upon the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991<sup>(32)</sup>.

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; 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 reasonably required by the Agency.

(5) In the event that surveys, inspections, tests or sampling establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

#### *Impairment of efficiency of drainage work for flood defence purposes*

7. If by reason of the construction of any specified work, or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency; and if the Company fail to do so within such reasonable period as the Agency may require by notice in writing to the Company, the Agency may make good such impairment or damage and recover from the Company the expense reasonably incurred by it in so doing.

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(32) 1991 c. 57.

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### *Protection of the fishery*

8.—(1) The Company shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work;

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve written notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice under sub-paragraph (2), the Company fails to take such steps as are described in the notice, the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that written notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity as to costs and expenses

9.—(1) The Company shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and
- (b) in the inspection, for the purpose of compliance with this Schedule, of the construction of the specified works or any protective works required by the Agency under this Schedule.

(2) The Company shall indemnify the Agency against all claims, demands, proceedings, costs, damages, expenses or losses, which may be made or taken against, or recovered from or incurred by the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any land adjoining the works; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, its contractors, agents or employees whilst engaged upon the specified works.

(3) The Agency shall give to the Company reasonable notice of any such claim, demand, or proceedings and no settlement or compromise of any such claim, demand, proceedings, costs, damages, expenses or losses shall be made without the consent of the Company which shall not be unreasonably withheld and if the Company shall not give such consent the Agency shall diligently defend such claim or demand.



10. The fact that any work or thing has been executed or done by the Company in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Company from any liability under paragraph 9.

#### *Approvals*

11.—(1) For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991(33) (abstraction and impounding of water) and section 109 of that Act (structures in, over or under a main river ) as applying to the construction of any specified work any consent or approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

(2) Section 23 of the Land Drainage Act 1991(34) (prohibition on obstructions etc in watercourses) and any byelaws made under that Act or the Water Resources Act 1991 shall not apply to anything done under or in pursuance of this Order.

#### *Disputes and differences*

12.—(1) Any dispute arising between the Company and the Agency under this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly.

(2) In the case of any conflict between any approval or consent given by the Agency pursuant to this Schedule and any condition or restriction imposed on any approval by the Secretary of State under article 10 (tidal works not to be executed without approval of Secretary of State), the terms of the approval of the Secretary of State shall prevail.

### SCHEDULE 7

Article 21

#### FOR THE PROTECTION OF THE HISTORIC ENVIRONMENT

1.—(1) The following provisions shall apply for the protection of the historic environment unless otherwise agreed in writing between the Company and English Heritage(35).

(2) In this Schedule—

“archaeological work” includes archaeological investigations, assessments and reporting;

“disposal site” means the site identified for disposal and described by latitudinal and longitudinal co-ordinates as given in the consent related to the works granted under the Food and Environment Protection Act 1985(36) or any other consent or licence granted for this project;

(33) Section 109 is amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 128, and is prospectively amended by the Marine and Coastal Access Act 2009 (c. 23), section 82.

(34) 1991 c. 59. Section 23 is amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 191 and 192. This section is prospectively amended by the Flood and Water Management Act 2010 (c. 29) section 31 and Schedule 2, paragraphs 25 and 32.

(35) English Heritage is the name by which the Historic Buildings and Monuments Commission for England, established under section 32 of the National Heritage Act 1983 (c. 47), is known.

(36) 1985 c. 48.

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“post-construction archaeological work” means any archaeological work which is in the Scheme expressed as being required to be carried out by the Company after the completion of construction of a relevant work;

“pre-construction archaeological work” means any archaeological work which is in the Scheme expressed as being required to be carried out by the Company before the commencement of construction of a relevant work;

“relevant work” means any and each of the following—

- (a) Works Nos. 1, 2, 3, 4, 5 and 6 or any of them;
- (b) Dredging Works Nos. 1, 2, 4 and 5 or any of them;
- (c) Dredging Work No. 3; and
- (d) any of Dredging Works Nos. 1, 2, 3, 4 and 5 but only insofar as they result in the disposal of material in the disposal site;

“Retained Archaeologist” means the suitably qualified and experienced archaeologist or archaeological organisation to be employed and retained by the Company as required by the Scheme to supervise the implementation of the Scheme; and

“Scheme” means the Written Scheme of Investigation relating to the works agreed between the Company and English Heritage prepared by Wessex Archaeology under reference 70440.5 and dated 18 December 2008 and including a Dredge Reporting Protocol, and the definition shall include all method statements and generic method statements agreed pursuant to the Scheme and all amendments and revisions to the Scheme from time to time.

#### *Written scheme of investigation*

2. The Company shall not commence construction of a relevant work until the Company has—
  - (a) appointed the Retained Archaeologist to ensure the delivery of the Scheme; and
  - (b) carried out the pre-construction archaeological work applicable to that relevant work.
3. During construction of a relevant work, the Company will secure the implementation of the measures on its part set out in or from time to time agreed pursuant to the Scheme applicable to that relevant work (other than the pre-construction archaeological work and the post-construction archaeological work).
4. Following the completion of construction of a relevant work, the Company will secure the implementation of all the post-construction archaeological work applicable to that relevant work.
5. Any work executed or undertaken by or on behalf of the Company in accordance with the Scheme approved or deemed to be approved by English Heritage shall not relieve the Company of any liability.

#### *Application of Town and Country Planning legislation*

6. The provisions of this Schedule shall be deemed to be conditions subject to which a planning permission was granted under section 70 of the 1990 Act and, accordingly, they shall be subject to the provisions of that Act and all associated legislation and, in particular, they may be varied in their application to the works in accordance with sections 73 and 73A of the 1990 Act and the Town and Country Planning (General Development Procedure) Order 1995.

SCHEDULE 8

Article 22

FOR THE PROTECTION OF THE HIGHWAYS AGENCY

1. In this Schedule—

“Port Management Plan” means the Bristol Deep Sea Container Terminal Port Management Plan agreed between the Company and the Highways Agency of the Secretary of State for Transport (“Highways Agency”) dated December 2008 as it may be amended from time to time; and

“beneficial use” means the use of the works to generate revenue from shipping but, without limitation, does not include activities related to the construction, marketing, security or maintenance of the works.

*Construction management plan*

2.—(1) Construction of the works shall not commence until the Company has agreed with the Highways Agency pursuant to the provisions of the Port Management Plan the details of a construction management plan relating to the works, the construction management plan to be based on the Bristol Deep Sea Container Terminal construction management plan dated August 2008.

(2) During construction of the works, the Company will implement the measures on its part set out in and from time to time agreed pursuant to the construction management plan agreed under this paragraph.

*Travel plan*

3.—(1) None of the works shall be brought into beneficial use until the detailed measures comprising the travel plan for the operation of the works have been approved by the Highways Agency in accordance with the Port Management Plan, the travel plan to be based on the Bristol Deep Sea Container Terminal interim travel plan dated August 2008.

(2) During the beneficial use of the works, the Company shall implement the measures on its part set out in and from time to time agreed pursuant to the travel plan agreed under this paragraph.

*Port Management Plan*

4. During the beneficial use of the works the Company shall implement the measures and comply with the requirements on its part set out in and from time to time agreed pursuant to the Port Management Plan.

*Application of Town and Country Planning legislation*

5. The provisions of this Schedule shall be deemed to be conditions subject to which a planning permission was granted under section 70 of the 1990 Act and, accordingly, they shall be subject to the provisions of that Act and all associated legislation and, in particular, they may be varied in their application to the works in accordance with sections 73 and 73A of the 1990 Act and the Town and Country Planning (General Development Procedure) Order 1995.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises First Corporate Shipping Limited as harbour authority for the Port of Bristol and the Harbour of Bristol (other than the City Docks and the Portishead Pier and Docks) to reclaim land and to construct works at The Port of Bristol and on the bed of the River Severn, including a breakwater, a new quay, port facilities and rail infrastructure, and to dredge the River Severn in connection with those works and to provide an approach channel to those works. The Order also authorises the carrying out of subsidiary works and related construction activity.

The works will form part of Avonmouth Docks and of the undertaking of the Company. The Order extends the application of enactments and byelaws affecting the Port of Bristol and Harbour of Bristol so as to include the works.

By virtue of section 7(5) of the Pilotage Act 1987 a direction given by a competent harbour authority for the purposes of making pilotage compulsory for ships navigating in a specified area shall not apply to any area which is outside the authority's harbour unless the limits of jurisdiction of the authority for pilotage have been extended to cover that area.

This Order accordingly extends the limits of jurisdiction of First Corporate Shipping Limited for pilotage purposes under Part 1 of the Pilotage Act 1987 so as to include an area outside the port in respect of which the authority considers that pilotage should be compulsory.

The deposited plans and sections of the works authorised by the Order can be inspected during normal working hours at the offices of the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR and at the offices of the Company, St Andrew's House, St Andrew's Road, Avonmouth, Bristol BS11 9DQ.