

SCHEDULES

SCHEDULE 13

Article 38

FOR PROTECTION OF BRITISH WATERWAYS BOARD

1.—(1) The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Board, have effect.

(2) In this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any replacing, relaying, removal, alteration, renewal, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of that work;

and “construct” and “constructed” shall be construed accordingly;

“detriment” means any damage to the Dock or any other property of the Board and, without prejudice to the generality of that meaning, includes—

- (a) the erosion of the bed or banks of the Dock, or the impairment of the stability of any works, lands or premises forming part of the Dock;
- (b) the silting of the Dock or the deposit of materials in it so as to permanently damage the Dock;
- (c) the pollution of the Dock;
- (d) any permanent alteration in the water level of the Dock, or permanent interference with the supply of water thereto, or drainage of water therefrom; and
- (e) any permanent harm to the ecology of the Dock (including any permanent adverse impact on any site of special scientific interest comprised in the Dock);

“the Dock” includes the waterside and any works, lands or premises belonging to the Board, or under its management or control, and held or used by the Board in connection with the Dock;

“the engineer” means an engineer appointed by the Board for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective work” means a work which is reasonably necessary to be carried out before the commencement of construction of any specified work to prevent detriment;

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may directly and physically affect, the Dock; and

“the waterside” means so much of the waterside as defined by section 2 of the 1994 Act, as is comprised within the foregoing definition of “the Dock”.

2. DLRL shall not under the powers conferred by this Order acquire compulsorily any land of the Board or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works authorised by this Order.

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3.—(1) DLRL shall not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to the Dock unless such permanent obstruction or interference with such access is with the consent of the Board.

(2) Nothing in article 15 (discharge of water) shall authorise DLRL—

- (a) to discharge any water directly or indirectly into the Dock; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, the Dock (including the banks and bed thereof),

except with the consent of the Board and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(3) DLRL shall not exercise the powers conferred by article 16 (protective works to buildings) in relation to any building forming part of the Dock, or situated on land or property of the Board forming part of the Dock, unless such exercise is with the consent of the Board.

(4) DLRL shall not exercise the powers conferred by article 18 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act in relation to the Dock unless such exercise is with the consent of the Board.

(5) DLRL shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 to this Order, so as to permanently divert any right of access to the Dock, but any such right of access may be permanently diverted with the consent of the Board.

(6) The consent of the Board pursuant to any of sub-paragraphs (1), (3), (4) and (5) and the approval of plans under sub-paragraph (2) shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 15 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Board on giving reasonable notice (except in an emergency, when the Board may require immediate suspension) to DLRL to require DLRL to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of the Board and where a reasonable alternative is available to enable DLRL to discharge the water in question during the period of the suspension.

4. DLRL shall not use any land or property of the Board forming part of the Dock for the passage or siting of vehicles, plant or machinery employed in the construction of the specified work other than—

- (a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Board, its officers and agents and all other persons lawfully on such land or property.

5. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a way over land forming part of the Dock or any public right of way giving access to the Dock (“the closed section”) is temporarily closed to persons on foot or on cycles and there is no way which provides a reasonable alternative, DLRL shall to the reasonable satisfaction of the Board, provide in substitution as sufficient and convenient a way as is reasonably practicable between the points of commencement and termination of the closed section for such time as the closure continues.

6. Where so required by the engineer DLRL shall, to the reasonable satisfaction of the engineer, fence off any specified work or protective work or take such other steps as the engineer may require

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to be taken for the purpose of separating a specified work or a protective work from the Dock, whether on a temporary or permanent basis or both.

7.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works DLRL shall bear the reasonable costs of the carrying out, by a qualified surveyor or engineer (“the surveyor”) to be approved by the Board and DLRL, of surveys (“the surveys”) of so much of the Dock and of any land and existing works of DLRL which may provide support for the Dock as will or may be affected by the specified works.

(2) For the purposes of the surveys DLRL shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of DLRL which may provide support for the Dock as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such land and existing works of DLRL and to the specified works or the method of construction thereof.

(3) The reasonable costs of the surveys shall include the costs of any dewatering or reduction of the water level of any part of the Dock (where reasonably required) which may be effected to facilitate the carrying out of the surveys and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the surveys shall be provided to both the Board and DLRL.

8.—(1) DLRL shall, before commencing construction of any specified work, including any temporary works, supply to the Board proper and sufficient plans of that work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of any specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Board the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent); and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work shall be constructed by the Board or (if the Board so desires) by DLRL with all reasonable dispatch and DLRL shall not commence the construction of any specified work until the engineer has notified DLRL that the protective work has been completed to his reasonable satisfaction.

9. Without prejudice to its obligations under the foregoing provisions of this Schedule DLRL shall consult the Board on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works;

and shall have regard to such views as may be expressed by the Board, to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant, in particular, to the requirements imposed on the Board by section 22 (general environmental

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and recreational duties) of the British Waterways Act 1995(1) and to the interest of the Board in preserving and enhancing the environment of the Dock.

10. DLRL shall give to the engineer 56 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Dock.

11. DLRL shall provide and maintain at its own expense in the vicinity of any specified works or protective work such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified work or protective work.

12.—(1) Any specified works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 8(3)(b);
- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects the Dock, to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Board, its officers and agents and all other persons lawfully using the Dock.

(2) Nothing in this Order shall authorise DLRL to make or maintain any permanent works in or over the Dock so as to impede or prevent (whether by reducing the headroom or depth of water available for vessels, or the width of the Dock or otherwise) the passage of any vessel such as would have been capable of navigating the Dock on 2nd August 2006.

(3) Following the completion of the construction of the specified works DLRL shall restore the Dock to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

13.—(1) Any pile, stump or other obstruction which becomes exposed in consequence of the construction of a specified work shall be removed by DLRL or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the Dock as the Board may direct.

(2) If DLRL fail to remove any such pile, stump or other obstruction within 28 days after receipt of written notice from the Board requiring the removal, the Board may carry out the removal and recover its costs from DLRL.

14. DLRL shall not in the course of constructing any specified work or protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the Dock or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision shall not prevent DLRL from carrying out works within the Dock.

15.—(1) DLRL shall at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities for access shall be subject to DLRL's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

(2) DLRL shall supply the engineer with all such information as he may reasonably require with regard to any specified work or the method of constructing it.

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16.—(1) If during the construction of a specified work or during a period of 24 months after the completion of a specified work any alterations or additions, either permanent or temporary, to the Dock are reasonably necessary in consequence of the construction of the specified work in order to avoid detriment, and the Board gives to DLRL reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), DLRL shall pay to the Board the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Board in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the Dock is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by DLRL to the Board under this paragraph.

17.—(1) DLRL shall, upon completion of any part of any permanent specified work, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on, over or under the Dock in connection with that part of the specified work.

(2) All temporary works shall be removed to the reasonable satisfaction of the engineer, and in the construction, maintenance and removal of such works DLRL shall not cause unavoidable detriment.

18. If at any time after the completion of a specified work, not being a work vested in the Board, the Board gives notice to DLRL informing it that the state of maintenance of the work appears to be such that the work is causing, or is likely to cause, detriment, DLRL shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

19. Any additional expenses which the Board may reasonably incur in maintaining the Dock under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such maintenance has been given to DLRL, be repaid by DLRL to the Board.

20. DLRL shall repay to the Board all fees, costs, charges and expenses reasonably incurred by the Board—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by DLRL and the supervision by him of the construction or repair of any specified work and any protective work;
- (c) in respect of the employment during the period of the initial construction of any specified work or protective work of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any part of the Dock and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the Dock.

21.—(1) If any detriment shall be caused by the construction or failure of any specified work or protective work, DLRL (if so required by the Board) shall make good such detriment and shall pay to the Board all reasonable expenses to which the Board may be put, and compensation for any loss which the Board may sustain, in making good or otherwise by reason of the detriment.

(2) DLRL shall be responsible for and make good to the Board all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Board—

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- (a) by reason of the construction of any specified work or a protective work or the failure thereof; or
- (b) by reason of any act or omission of DLRL or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or of a protective work,

and subject to sub-paragraph (4) DLRL shall effectively indemnify and hold harmless the Board from and against all claims and demands arising out of any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Board on behalf of DLRL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Board or of any person in its employ or of its contractors or agents) excuse DLRL from any liability under the provisions of this paragraph.

(4) The Board shall give DLRL reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of DLRL.

22. Where under any provision of this Schedule the Board or DLRL (as the case may be) is entitled to a capitalised sum, it shall provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

23. Except as provided by this Order, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Board or alter or diminish any power, authority or jurisdiction vested in the Board at the making of this Order.

24. Any difference arising between DLRL and the Board under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 47 (arbitration).