



# Killingholme Generating Stations (Ancillary Powers) Act 1991

## 1991 CHAPTER viii

### PART IV

#### PROTECTIVE PROVISIONS

#### 26 For protection of A.B. Ports

For the protection of A.B. Ports, the following provisions shall, unless otherwise agreed in writing between the appropriate company and A.B. Ports, have effect:—

(1) In this section—

“construction” includes execution and placing, renewal, diversion or alteration and removal, and “constructed” shall be construed accordingly;

“plans” includes sections and “approved plans” means plans approved or deemed to have been approved by A.B. Ports or settled by arbitration:

- (2) (a) Before commencing the construction of any part of a tidal work plans showing the general mode of construction thereof shall be delivered by the appropriate company to A.B. Ports for its reasonable approval, and such tidal work shall not be constructed otherwise than in accordance with approved plans and to the reasonable satisfaction of A.B. Ports;
- (b) Without prejudice to the generality of sub-paragraph (a) above, with the exception of any intake or outfall forming part of the works, no part of any tidal work shall be constructed otherwise than at a level of two metres or more below the bed of the river and with a minimum of two metres of a suitable covering material placed above that work:
- (3) After the purpose for which any temporary works were placed or conveniences connected therewith in the river were constructed under the powers of this Act has been accomplished the appropriate company shall, with all reasonable dispatch, remove any such works or conveniences and if without reasonable cause they fail to do so A.B. Ports may remove the same, charging the appropriate company with the reasonable

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expense of so doing, and the appropriate company shall repay to A.B. Ports all such expense:

- (4) (a) The appropriate company shall before commencing any dredging in the river under the powers of this Act (other than maintenance dredging and except in an emergency) deliver to A.B. Ports for its reasonable approval plans defining the nature, extent and manner of such dredging, and such dredging shall not be carried out otherwise than in accordance with approved plans and in such manner as may be approved by A.B. Ports or as may be settled by arbitration;
- (b) In this paragraph “maintenance dredging” means dredging solely for the purpose of maintaining the bed, foreshore or banks of the river in the same condition as they were after dredging operations approved by A.B. Ports had been carried out:
- (5) If A.B. Ports fails to express its disapproval of any plans within two months after they have been delivered to it in pursuance of this section, it shall be deemed to have approved them:
- (6) If there shall be any inconsistency between any approved plans and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the tidal work to which the plans relate shall be constructed in accordance with the plans approved by the Secretary of State:
- (7) (a) If during the construction of or within the prescribed period after the completion of the National Power works or the PowerGen works, as the case may be, it is agreed between the appropriate company and A.B. Ports or, in default of agreement, it is proved to the satisfaction of an arbitrator to be appointed in accordance with section 31 (Arbitration) of this Act that any accumulation or erosion has been caused wholly or partly by the construction of any of the works or the carrying out of any dredging operation under section 9 (Power to dredge) of this Act, the appropriate company shall carry out such remedial work as may be agreed or in default of agreement as may be proved to the satisfaction of the arbitrator to have been caused by the construction of any of the works or the carrying out of any dredging operation as aforesaid and, if they refuse or fail so to do A.B. Ports may itself cause the work to be done and may recover the reasonable cost thereof from the appropriate company;
- (b) In this paragraph—
- “accumulation” means any accumulation of silt or other material which shall constitute an impediment to navigation;
- “erosion” means any erosion of any jetty or other structure of whatever nature owned or occupied by A.B. Ports;
- “remedial work” means—
- (i) in the case of an accumulation, its removal; and
- (ii) in the case of erosion such reconstruction works and other protective works or measures as may be necessary;
- “the prescribed period” means a period of 10 years and if during that period there has been an accumulation or erosion such as to give rise to an obligation by the appropriate company under this paragraph to carry out remedial work, a further period of 10 years:
- (8) During any dredging operations carried out by the appropriate company in the course of the construction of the National Power works or the PowerGen works, as the case

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may be, the appropriate company shall, if required by A.B. Ports, provide and maintain to the reasonable satisfaction of A.B. Ports—

- (a) such lighted mooring or other buoys at any deposit ground in the river which may be approved for the deposit of dredgings by the appropriate company from the site of the works; and
  - (b) take all such other steps as may be required by A.B. Ports to prevent danger to navigation:
- (9) The provisions of section 15 (Abatement of works abandoned or decayed), section 16 (Survey of tidal works) and section 18 (Lights on tidal works during construction) of this Act shall, with any necessary modifications, apply to A.B. Ports as if, in the case of the said section 15, A.B. Ports were named therein in addition to the Secretary of State and the rivers authority and, in the case of the other two sections, in addition to the Secretary of State and any expenses incurred by A.B. Ports in pursuance of either of the said sections 15 and 16 shall be recoverable from the appropriate company:

Provided that—

- (a) if there is any inconsistency between any requirement or direction of the Secretary of State and of A.B. Ports the former shall prevail and the appropriate company shall be deemed to have complied with the provisions of those sections if they have complied with the requirement or direction of the Secretary of State;
  - (b) the annual survey of the river carried out by A.B. Ports in the performance of its functions as the navigation authority shall not be treated as a survey carried out under the said section 16:
- (10) The appropriate company shall at all reasonable times during construction of the works and thereafter allow A.B. Ports, its servants and agents, access to the National Power works or the PowerGen works, as the case may be:
- (11) The appropriate company shall not acquire compulsorily under the powers of this Act the interests of A.B. Ports in the lands numbered 2 and 3 in the parish on the deposited plans but the appropriate company may in accordance with the provisions of section 20 (Purchase of rights) of this Act acquire compulsorily such rights in the said lands as they may reasonably require for the purposes of the works:
- (12) The appropriate company shall pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work:
- (13) (a) Without prejudice to the other provisions of this section, the appropriate company shall be responsible for, and make good to A.B. Ports, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of A.B. Ports) which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—
- (i) the perusal of plans and the inspection of any of the works or the regulation of any dredging operation by A.B. Ports or its duly authorised representative;
  - (ii) the carrying out of such surveys, inspections, tests and sampling within the river as A.B. Ports after consultation with the appropriate company reasonably considers necessary to establish whether or not the discharge or dispersal of water into the river by means of any of

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- the works is causing or has caused any damage to or deterioration of any existing jetty or other structure owned or occupied by A.B. Ports;
- (iii) the construction or maintenance of any of the works or the carrying out of any dredging operation, the discharge or dispersal of water into the river by means of any of the works, the failure of any of the works or the undertaking by A.B. Ports of works or measures to prevent or remedy damage to any property of A.B. Ports arising from such construction, carrying out, discharge or dispersal, or failure;
- (iv) any act or omission of the appropriate company or their servants or agents whilst engaged in the construction or maintenance of any of the works or the carrying out of any dredging operation;
- (b) Without prejudice to the generality of sub-paragraph (a) of this paragraph the appropriate company shall indemnify A.B. Ports from and against all claims and demands arising out of, or in connection with, such construction, carrying out, discharge or dispersal, failure or act or omission as is mentioned in that sub-paragraph;
- (c) A.B. Ports shall give to the appropriate company notice of any claim or demand made against it which is a claim or demand for which the appropriate company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the appropriate company:
- (14) The fact that any work or thing has been executed or done with the consent of A.B. Ports and in accordance with any conditions or restrictions prescribed by A.B. Ports or in accordance with plans approved or deemed to be approved by A.B. Ports or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the appropriate company from any liability under the provisions of this section:
- (15) With the exception of any duty owed by A.B. Ports to the appropriate company expressly provided for in the foregoing provisions of this section, nothing in this Act shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any court:
- (16) Subject to the provisions of section 20 (Purchase of rights) of this Act, nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports at the commencement of this Act or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it:
- (17) Any difference arising between the appropriate company and A.B. Ports under this section (other than a difference as to the construction of this section) shall be settled by arbitration.