
STATUTORY INSTRUMENTS

1994 No. 1693

HARBOURS, DOCKS, PIERS AND FERRIES

**The North Killingholme Haven
Harbour Empowerment Order 1994**

Made - - - - 27th June 1994

Coming into force - - 8th July 1994

Whereas Simon Storage Group Limited have applied for a harbour empowerment order under section 16 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport having, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex III to the Directive;

And whereas the Secretary of State for Transport has considered the information supplied under the said paragraph 1A;

And whereas objections to the application made pursuant to paragraph 3(a) of the said Schedule 3 have been withdrawn;

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (5) of the said section 16:

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred by the said section 16 and now vested in him(4), and of all other powers enabling him in that behalf, hereby makes the following Order:—

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- (1) 1964 c. 40; section 16 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 3,4(1) and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 2. For the definition of “the Minister” (mentioned in section 16) see section 57(1).
- (2) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S. I. 1988/1336), regulations 3 and 4 and amended by S. I. 1992/1421.
- (3) OJ No. L175, 5.7.85, p. 40.
- (4) S. I.1981/238.

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the North Killingholme Haven Harbour Empowerment Order 1994 and shall come into force on 8th July 1994.

Interpretation

2.—(1) In this Order, except where the context otherwise requires—

“A.B. Ports” means Associated British Ports;

“the Company” means Simon Storage Group Limited (which is registered in England and Wales with the number 278815);

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate signed by an Assistant Secretary in the Department of Transport and marked “Plan and sections referred to in the North Killingholme Haven Harbour Empowerment Order 1994” of which copies are deposited at the offices of the Secretary of State for Transport, the offices of A.B. Ports and the registered office of the Company;

“the Harbour Master” means the harbour master appointed by A.B. Ports under section 5 (Appointment of harbour master) of the British Transport Docks Act 1972⁽⁵⁾ and includes his deputies and assistants;

“the jetty premises” means the works and the land and premises at any time belonging to, or vested in, the Company and used or set aside for the purposes of, or in connection with, the commercial management and operation of the works;

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

“limits of deviation” means the limits of deviation shown on the deposited plan;

“the river” means the river Humber;

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

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

“vessel” means a ship, boat or raft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968⁽⁶⁾ or any other amphibious vehicle or a seaplane;

“the works” means Works Nos 1 and 2 authorised by article 5 (Power to construct works) of this Order, and any works constructed under article 7 (Subsidiary works) of this Order for or in connection with or subsidiary to either of those works and includes those works as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid under paragraph (2) of the said article 5.

(2) Any reference in this Order to a distance or length in any description of works, powers or land shall be construed as if the words “or thereabouts” were inserted after that reference.

(5) 1972 c. xxxvii.

(6) 1968 c. 59.

Incorporation of Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Harbours, Docks, and Piers Clauses Act 1847(7) (except sections 6 to 19, 20 to 25, 31, the proviso to section 32, sections 33, 42, 48 to 50, 60 to 63, 66, 67, 73, and 77 to 82), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 69 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(3) The byelaws which the Company may make by virtue of section 83 shall include such byelaws as they think fit for all or any of the following purposes—

- (a) the management, control and regulation of the jetty premises and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the jetty premises;
- (b) the control and regulation of vessels being within the prescribed limits;
- (c) the conduct of persons using or being on the jetty premises and the control or prohibition of smoking by such persons;
- (d) safety precautions to be observed by persons on vessels being within the prescribed limits or persons using or being on the jetty premises.

(a) (4) (a) Section 85 shall have effect as if for the words from “in the prescribed manner” to the end there were substituted the words “by the Secretary of State”.

(b) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972(8) shall apply to any byelaws made by the Company under the said section 85 as incorporated with this Order; and those provisions, in their application to any such byelaws, shall have effect as if the references to a local authority were references to the Company.

(c) Subsection (7) of the said section 236, in its application to any such byelaws, shall have effect as if—

(i) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”; and

(ii) there were added at the end the following proviso—

“Provided that, where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Company and by any other persons who have, or are likely to have, been informed of it.”.

(d) The said section 238, in its application to any such byelaws, shall have effect as if the reference to the proper officer of the authority were a reference to the secretary of the Company.

(5) In construing the provisions of the said Act of 1847 as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expressions

(7) 1847 c. 27.

(8) 1972 c. 70.

“the Promoters of the undertaking” and “the undertakers” mean the Company, and the expression “the harbour, dock or pier” means the works;

- (b) the expression “the harbour master” means the person appointed by the Company to be the Dockmaster with reference to the works (in this Order referred to as “the Dockmaster of the Company”);
- (c) the meaning of the word “vessel” as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;
- (d) section 52 of the Act of 1847 shall extend to empower the Dockmaster of the Company to give directions prohibiting the mooring of vessels within the prescribed limits;
- (e) the reference in section 53 of the Act of 1847 to notice of a direction by the harbourmaster served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the Dockmaster of the Company to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

PART II

LIMITS OF JURISDICTION

Limits of jurisdiction

4.—(1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of their Dockmaster shall be exercised shall comprise the jetty premises together with so much of the river as lies within the area of water adjacent to those premises and which is bounded by an imaginary line 100 metres from the works.

(2) The jurisdiction of the Company as a harbour authority and the powers of their Dockmaster conferred under or by virtue of this Order shall be exercised only in relation to vessels going to, moored at or departing from the works and, without prejudice to the generality of the foregoing, shall not be exercised in relation to any vessel navigating or at anchor in the river unless any such vessel is obstructing the approaches to the works.

(3) In case of conflict between any direction given by the Harbour Master and any direction given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

PART III

WORKS

Power to construct works

5.—(1) Subject to the provisions of this Order, the Company may, in the lines or situations and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described, in the district of Glanford, with all necessary works and conveniences connected therewith—

Work No. 1

A fixed jetty of open construction with bearing piles, breasting and mooring structures, ramps and pontoons, and a reinforced concrete and steel platform commencing at point TA

1667020702 and terminating at point TA 1699420291, and having an overall length of 523 metres and an overall width of 104 metres.

Work No. 2

An approach bridge to Work No. 1 of open construction with bearing piles and a reinforced concrete and steel platform, commencing at point TA1653220264 and terminating at point TA1678820467, and having an overall length of 327 metres and an overall width of 40 metres.

(2) Subject to the provisions of this Order, the Company may within the limits of deviation reconstruct, renew, alter, extend, enlarge, add to, replace or relay the works and may maintain the same as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid.

(3) The points specified in paragraph (1) above are Ordnance Survey National Grid reference points.

Power to deviate

6. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

Subsidiary works

7. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works.

Period for commencement of works

8. If the works are not commenced 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 by this Order granted to the Company for making and maintaining the works shall cease.

Works to be within county of Humberside etc.

9.—(1) So much of the works as are beyond mean low water shall be deemed to be within—

- (a) the county of Humberside;
- (b) the district of Glanford;
- (c) the petty sessional division of Barton on Humber;
- (d) the Ferry electoral division; and
- (e) the Humber ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841⁽⁹⁾ until the Company have certified in writing to the Director General of Ordnance Survey that the works have been completed.

(9) 1841 c. 30.

Power to dredge

10.—(1) Subject to article 25 (Crown rights) of this Order, the Company may, for the purposes of constructing and maintaining the works from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894⁽¹⁰⁾) from time to time dredged by them.

(2) No materials so dredged, other than those dredged for the purpose of constructing the works or filling in and reclaiming from the harbour and foreshore so much of the harbour and foreshore as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(3) The Company shall not exercise the powers conferred on them by this article except with the written consent of A.B.Ports (which it shall not unreasonably withhold) and in accordance with such conditions and restrictions as may be reasonably prescribed by A.B.Ports.

Obstruction of works

11. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall for every such offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

12.—(1) A tidal work shall not be constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid in contravention of this article—

- (a) the Secretary of State may by notice in writing require the Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Lights on tidal works during construction

13.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, addition, extension, enlargement, alteration, replacement or relaying thereof or addition thereto, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State or A.B.Ports or as, failing agreement between them, the Secretary of State shall from time to time direct.

(10) 1894 c. 60.

(2) If the Company fail to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Provision against danger to navigation

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

(2) If the Company fail to notify A.B.Ports as required by this article or to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Abatement of works abandoned or decayed

15.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or A.B.Ports may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State or A.B.Ports or as, failing agreement between them, the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State or A.B.Ports may include that part of the work, or any portion thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State or A.B.Ports may execute the works specified in the notice and any expenditure incurred by him or A.B.Ports in so doing shall be recoverable from the Company.

Survey of tidal works

16. If the Secretary of State or A.B.Ports deems it expedient to do so, the Secretary of State or A.B.Ports may 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 or A.B.Ports in any such survey and examination shall be recoverable from the Company.

Permanent lights on tidal works

17.—(1) After the completion of a tidal work the Company shall at the outer extremity thereof 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 A.B.Ports may from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART IV

MISCELLANEOUS AND GENERAL

Power to mortgage jetty premises

18. The Company may mortgage, charge or otherwise encumber the jetty premises.

Power to make charges

19.—(1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

Further provisions as to byelaws

20.—(1) The Company shall consult A.B.Ports and the National Rivers Authority not less than three months before making any byelaw under or by virtue of this Order.

(2) The Company shall not under or by virtue of this Order—

- (a) make any byelaw for the control or regulation of vessels not going to, moored at or departing from the works;
- (b) make any byelaw which in the reasonable opinion of the Harbour Master would conflict with any byelaws made by A.B.Ports or with any powers exercisable by A.B.Ports or the Harbour Master for the regulation of navigation in the river; or
- (c) make any byelaw regulating any vessel owned or used by A.B.Ports or regulating the conduct of officers of A.B.Ports whilst in the exercise of their duties as such.

(3) The Company shall not make any byelaw under or by virtue of this Order so as to conflict with any byelaws of the National Rivers Authority.

Local inquiries

21. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order, and subsections (2) to (5) of section 250 of the Local Government Act 1972(11) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

Defence of due diligence

- (a) 22. (1) (a) In proceedings for an offence under any provision of this Order mentioned in sub-paragraph (b) below it shall be a defence for the Company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(11) Subsection 2 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.

(b) The provisions referred to in sub-paragraph (a) above are— article 13 (Lights on tidal works during construction); article 14 (Provision against danger to navigation); article 17 (Permanent lights on tidal works).

(2) If in any case the defence provided by sub-paragraph (a) of paragraph

(1) above 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, they have 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 their possession.

Power to remove goods

23.—(1) If any goods are left on or in any part of the jetty premises the Company may require the owner of the goods to remove them, and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company’s or any other public warehouse or store, and such removal shall be carried out at the expense and risk of the owner:

Provided that notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

(2) In this article, “goods” includes vehicles and equipment.

Obstruction of officers

24.—(1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions; shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Any person who in giving such information makes a statement which he knows to be false shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Crown rights

25.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

Saving for Trinity House

26. None of the provisions of this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Protection of interests

27.—(1) The Schedule to this Order shall have effect for protecting the interests of the bodies specified in that Schedule (being bodies who may be affected by other provisions of this Order).

(2) Where under the Schedule to this Order any difference is to be determined by arbitration, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of agreement, to be appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers.

Special exemptions

28. Section 5 (Removal of obstructions) of the Humber Conservancy Act 1899(**12**) and section 6 (No erections in Humber below river lines or without license above river lines) of the Humber Conservancy Act 1905(**13**) shall not apply to the works, and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without license of Commissioners) of the said Act of 1905 shall not apply to the exercise by the Company of the powers of article 10 (Power to dredge) of this Order.

Signed by authority of the Secretary of State for Transport

27th June 1994

J. D. Henes
An Under Secretary in the
Department of Transport

(12) 1899 c. cci.
(13) 1905 c. clxxix.

SCHEDULE

PROTECTIVE PROVISIONS

Article 27(1)

Part I

PROTECTION OF ASSOCIATED BRITISH PORTS

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and

“constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;

“plans” includes sections, descriptions, drawings and specifications.

2.—(1) Before commencing the construction of a tidal work the Company shall furnish to A.B.Ports for its approval, which it shall not unreasonably withhold, plans of the work showing the general mode of construction and such work shall not be constructed otherwise than in accordance with such plans as may be approved by A.B.Ports or as may be determined as hereinafter provided and all such works shall be executed to the reasonable satisfaction of A.B.Ports.

(2) When submitting plans to the Secretary of State pursuant to article 12 (Tidal works not to be executed without approval of Secretary of State) of this Order, the Company shall send a copy thereof to A.B.Ports and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that article, send a copy to A.B.Ports.

(3) In the event of A.B.Ports failing to express its disapproval of any plans within 56 days after they have been delivered to it under this paragraph, it shall be deemed to have approved them.

3. The Company shall give to A.B.Ports not less than fourteen days' written notice of their intention to commence the construction of a tidal work and, not more than fourteen days after completion of such construction, shall give to A.B.Ports written notice of such completion.

4. The Company shall at all reasonable times during construction of the works and thereafter allow A.B.Ports, its servants and agents, access to the works and all reasonable facilities for inspecting any tidal work.

5. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from A.B.Ports requiring them so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Company and, on their failing so to do within a reasonable period after receiving such notice, A.B.Ports may remove the same and charge the Company with the reasonable expense of so doing, which expense the Company shall repay to A.B.Ports.

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6.—(1) If, during the construction of a tidal work or within 10 years after the completion of such work and wholly or partly in consequence of its construction or, if during the exercise of the powers conferred by article 10 (Power to dredge) of this Order or within 10 years thereafter and wholly or partly in consequence thereof there is caused or created an accumulation or erosion, the Company, if so requested by A.B.Ports before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below 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 Company.

(2) Should any accumulation or erosion in consequence of such construction or exercise arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save 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 being caused or created in consequence of such construction or exercise.

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

- (a) in the case of an accumulation, the remedy shall be its removal; 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 necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph 8(1)(b) of this Part of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by the said article 10, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

7. The Company shall—

- (a) 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;
- (b) provide and maintain on the works such fog-signalling apparatus as may be reasonably required by A.B.Ports and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the works; and
- (c) afford to A.B.Ports such facilities as it may reasonably require for the placing and maintenance on the works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

8.—(1) Without prejudice to the other provisions of this Part of this Schedule, the 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—

- (a) the perusal of plans and the inspection of any of the tidal works or the regulation of the exercise of powers conferred by article 10 (Power to dredge) of this Order by A.B.Ports or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks thereof)—

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- (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as A.B.Ports has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the Company are liable to remedy under paragraph 6 of this Part of this Schedule; and
 - (ii) where A.B.Ports has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by the said article 10 is causing or has caused any accumulation or erosion as aforesaid;
- (c) the construction of any of the tidal works or the exercise of the powers conferred by the said article 10, the failure of any of the tidal works or the undertaking by A.B.Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A.B.Ports arising from such construction, exercise or failure;
- (d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works or the exercise of the powers conferred by the said article 10.
- (2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the Company shall indemnify A.B.Ports from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that sub-paragraph.
- (3) Nothing in this paragraph shall impose any liability on the Company to the extent that any losses, costs, charges, damages, expenses, claims or demands as referred to in sub-paragraphs (1) and (2) above are attributable to negligence on the part of A.B.Ports or of any person in its employ or of its contractors or agents.
- (4) A.B.Ports shall give to the Company notice of any claim or demand for which the 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 Company.
- 9.** 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 Company from any liability under the provisions of this Part of this Schedule.
- 10.** With the exception of any duty owed by A.B.Ports to the Company expressly provided for in the foregoing provisions of this Part of this Schedule, nothing in this Order 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.
- 11.** Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B.Ports or the Harbour Master at the commencement of this Order or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it.
- 12.** Any difference arising between the Company and A.B. Ports under this Part of this Schedule shall be determined by arbitration.

Part II

PROTECTION OF NATIONAL RIVERS AUTHORITY

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which affects the operation of any outfall;

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“the Authority” means the National Rivers Authority;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and

“construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water (including sea water);

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature, including the Humber sea defences, under the jurisdiction of the Authority for the purposes of the Water Resources Act 1991(14);

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

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken) as is undertaken between low water mark and the Humber Bank sea defence embankment or is otherwise situated in, on, under, over or within 16 metres of a drainage work or which is otherwise likely to—

- (a) affect any drainage work or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse;
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

2.—(1) Before beginning to construct any specified work, the Company shall submit to the Authority plans of the work and such further particulars available to them as the Authority may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Authority, or determined in accordance with paragraph 16 below.

(3) Any approval of the Authority required under this paragraph—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;
- (c) may be given subject to such reasonable requirements as the Authority may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

3. Without prejudice to the generality of paragraph 2 above, the requirements which the Authority may impose under that paragraph include—

- (a) conditions as to the time at which and the manner in which any work is to be carried out;
- (b) conditions requiring the Company at their own expense—

(14) 1991 c. 57.

- (i) to provide or maintain means of access for the Authority;
- (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 and 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;
- (iii) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur;
- (iv) to undertake monitoring of any accumulation, scouring or erosion which may be caused by any specified work.

4. Any specified work, and all protective works required by the Authority under paragraph 2 above, shall be constructed to the reasonable satisfaction of the Authority, and the Authority shall be entitled by its officer to watch and inspect the construction of such works.

5. The Company shall give to the Authority notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

6.—(1) If, during the construction of a specified work or within 10 years after the completion of such work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion, the Company, if so requested by the Authority before or within the period of 10 years after such completion shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, the Authority may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save 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 being caused or created in consequence of such construction.

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

- (a) in the case of an accumulation, the remedy shall be its removal; 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 Authority.

(4) In the event that surveys, inspections, tests or sampling establish to the reasonable satisfaction of the Authority 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 or exercise as aforesaid.

7. For the purposes of paragraphs 5 and 6(1) above the date of completion of a work shall be the date on which it is brought into use.

8.—(1) Any specified work which provides a defence against flooding shall be maintained by and at the expense of the Company to the reasonable satisfaction of the Authority.

(2) If any such work is no longer required by the Company or is not maintained to the reasonable satisfaction of the Authority, the Authority may by notice in writing require the Company at the

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Company's own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Authority think proper.

(3) If, on the expiration of 30 days from the date on which a notice is served upon the Company, the Company have failed to comply with the requirements of the notice, the Authority may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Company.

9. If by reason of the construction of any specified work or by reason of the failure of that work or of the Company to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Authority and, if the Company fail to do so, the Authority may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

10. In the event that any works are constructed by the Authority in relation to a sea defence, the Company shall have no claim against the Authority in respect of any additional costs which may be incurred by the Company as a result of such works.

11. The Company shall indemnify the Authority in respect of all costs, charges and expenses which the Authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Authority under this Part of this Schedule.

12.—(1) Without prejudice to the other provisions of this Part of this Schedule the Company shall indemnify the Authority against all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Authority by reason of the construction of any of the works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Company, their contractors, agents, workmen or servants whilst engaged upon any such work.

(2) The Authority shall give to the Company reasonable notice of any such claim or demand; and no settlement or compromise thereof shall be made without the agreement of the Company, which agreement shall not be unreasonably withheld.

13.—(1) Plans of any specified work submitted by the Company to the Secretary of State under article 12 (Tidal works not to be executed without approval of Secretary of State) of this Order shall be consistent with the plans of that work submitted to the Authority under this Part of this Schedule and, if, on the submission of plans to the Secretary of State he requires any alteration of the plans as submitted to the Authority or approved by it or settled under this Part of this Schedule, or of any requirement relating thereto, the Company shall inform the Authority of such alteration.

(2) When submitting any plans to the Secretary of State under the said article 12, the Company shall send a copy of the plans to the Authority; and the Company shall, on receipt of approval of plans or of any conditions or restrictions imposed under that article, send a copy to the Authority.

14. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Company from any liability under the provisions of this Part of this Schedule.

15. Except as otherwise provided by this Part of this Schedule, nothing in this Order shall prejudice or affect in their application to the Authority the powers, rights, jurisdiction and obligations

conferred, arising or imposed under the Land Drainage Act 1991⁽¹⁵⁾, the Salmon and Freshwater Fisheries Act 1975⁽¹⁶⁾, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Authority.

16. Any difference arising between the Company and the Authority under this Part of this Schedule shall be determined by arbitration.

Part III

PROTECTION OF POWERGEN PLC

1. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to the operation or maintenance of the PowerGen works;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal;

“erosion” means any erosion of the bed or banks of the river in the immediate vicinity of the PowerGen works affecting the operation and stability of those works;

“PowerGen” means PowerGen Plc;

“the PowerGen works” means any of the works PowerGen is empowered to construct under Part II of the Killingholme Generating Stations (Ancillary Powers) Act 1991⁽¹⁷⁾.

2.—(1) If, during the construction of a tidal work or within 10 years after the completion of such work and wholly or partly in consequence of its construction or, if during the exercise of the powers conferred by article 10 (Power to dredge) of this Order or within 10 years thereafter and wholly or partly in consequence thereof there is caused or created an accumulation or erosion, the Company, if so requested by PowerGen, before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in sub-paragraph (3) below and, if they refuse or fail so to do, PowerGen may itself cause the work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion in consequence of such construction or exercise arise within the said period of 10 years and be remedied in accordance with sub-paragraph (3) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save 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 being caused or created in consequence of such construction or exercise.

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

(a) in the case of an accumulation, the remedy shall be its removal; and

(b) in the case of erosion, the remedy shall be the carrying out of such protective works or measures as may be necessary and the reimbursing to PowerGen of its reasonable costs of carrying out such reconstruction works as may be necessary:

Provided that in the event that surveys, inspections, tests or sampling establish to the reasonable satisfaction of PowerGen that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by the said article 10, the Company shall be liable to remedy such accumulation

⁽¹⁵⁾ 1991 c. 59.

⁽¹⁶⁾ 1975 c. 51.

⁽¹⁷⁾ 1991 c. viii.

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or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(4) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

3.—(1) This paragraph applies where—

(a) either—

(i) any costs, charges, damages or expenses are occasioned to or reasonably incurred by PowerGen by reason of—

(A) the failure of the works; or

(B) any act or omission of the Company or of any persons in their employment or of their contractors or others whilst engaged upon the construction or maintenance of the works or upon operations carried out under article (Power to dredge) of this Order; or

(ii) any claim or demand arises out of or in connection with the construction or maintenance of the works or any such failure, act or omission as aforesaid; and

(b) as a result of any such failure, act or omission or of the construction or maintenance of the works, any thing forming part of the works or used in connection with the construction or maintenance of the works or in connection with any such operations as aforesaid is carried downstream and causes damage to the PowerGen works.

(2) Where this paragraph applies, then (subject to paragraphs (3) and (4) below) the Company shall—

(a) be responsible for and make good to PowerGen all such costs, charges, damages and expenses as are mentioned in paragraph (1)(a)(i) above; and

(b) indemnify PowerGen from and against all such claims and demands as are mentioned in paragraph (1)(a)(ii) above.

(3) Nothing in this paragraph shall impose any liability on the Company in respect of any such claim or demand in so far as and to the extent to which it is attributable to the act, neglect or default of any person other than the Company, their contractors, agents, workmen or servants.

(4) PowerGen shall give to the Company immediate notice of any such claim or demand as is mentioned in paragraph(1)(a)(ii) above, and no settlement or compromise thereof shall be made except with the consent of the Company who (if they so elect) shall at their expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same.

4. Any difference arising between the Company and PowerGen under this Part of this Schedule shall be determined by arbitration.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Simon Storage Group Limited to construct and maintain specified works at North Killingholme and to carry out subsidiary works. The specified works, together with adjacent land of the Company used for the business form the “jetty premises”.

The Order defines the limits of jurisdiction of the Company as a harbour authority in relation to the jetty premises and confers various powers on the Company for the operation and maintenance of the works.