

SCHEDULES

SCHEDULE 5

Article 41

PROTECTION OF POOLE HARBOUR COMMISSIONERS

1. For the protection of the Commissioners, the following provisions shall have effect and shall apply save as otherwise agreed in writing between the Council and the Commissioners.

2. In this Schedule—

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

“the Channel” means the Back Water Channel;

“construction” includes execution, placing and maintenance and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the Channel or other structure of whatever nature; and

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

3. Section 20(1) of the Poole Harbour Act 1914(1) (which requires works to be licensed by the Commissioners in accordance with that Act) shall not apply in the case of the authorised works.

4. The Council shall at all reasonable times during construction of the authorised works and thereafter allow the Commissioners, their servants and agents, access to those works and all reasonable facilities for inspecting any tidal work.

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

6. If, during the construction of a tidal work or within 10 years after the completion of such work and as a consequence (whether in whole or in part) of its construction, there is caused or created an accumulation or erosion, the Council, if so requested by the Commissioners before or within the period of 10 years after such completion or exercise, shall remedy such accumulation or erosion in the manner specified in paragraph 8 and, if it refuses or fails so to do, the Commissioners may themselves cause the work to be done and may recover the reasonable cost thereof from the Council.

7. Should any accumulation or erosion in consequence of such construction arise within the period of 10 years mentioned in paragraph 6 and be remedied in accordance with paragraph 8, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Council during that period of 10 years and at any time thereafter, save that the Council’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 from the completion of that remedying, without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(1) 1914 c.clv.

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

8. For the purpose of paragraphs 6 and 7—

- (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.

9. In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph 12(b) establish that any accumulation or erosion mentioned in paragraphs 6 or 7 would have been caused in any event by factors other than the construction of a tidal work, the Council shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction as aforesaid.

10. For the purposes of paragraph 6 the date of completion of a work shall be the date on which it is brought into use.

11. The Council shall—

- (a) pay to the Commissioners the reasonable costs incurred by the Commissioners of such alterations to the marking and lighting of the navigational channel of the Channel as may be necessary during or in consequence of the construction of a tidal work;
- (b) provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by the Commissioners and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works; and
- (c) afford to the Commissioners such facilities as they may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

12. Without prejudice to the other provisions of this Schedule, the Council shall be responsible for, and make good to the Commissioners, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of the Commissioners) which may reasonably be incurred or occasioned to the Commissioners by reason of or arising from or in connection with—

- (a) the inspection of any of the tidal works by the Commissioners or their duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the Channel (including the bed and banks of the Channel)—
 - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the river as the authority have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the Council is liable to remedy under this Schedule; and
 - (ii) where the Commissioners have reasonable cause to believe that the construction of any of the tidal works is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (c) the construction of any of the tidal works or the failure of any of the tidal works or the undertaking by the Commissioners of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such construction, exercise or failure; and
- (d) any act or omission of the Council or its servants or agents whilst engaged in the construction or operation of any of the tidal works.

13. Without prejudice to the generality of paragraph 12, the Council shall indemnify the Commissioners 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 paragraph.

14. Nothing in this Schedule shall impose any liability on the Council to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in paragraphs 12 and 13 are attributable to negligence on the part of the Commissioners or of any person in their employ or of their contractors or agents.

15. The Commissioners shall give to the Council notice of any claim or demand in relation to which the Council may be liable under this Schedule and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Council.

16. The fact that any work or thing has been executed or done with the consent of the Commissioners and in accordance with any conditions or restrictions prescribed by the Commissioners 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 Council from any liability under the provisions of this Schedule.

17. With the exception of any duty owed by the Commissioners to the Council which is expressly provided for in the foregoing provisions of this Schedule, nothing in this order shall be construed as imposing upon the Commissioners either directly or indirectly, any duty or liability to which the Commissioners would not otherwise be subject and which is enforceable by proceedings before any court.

18. Save as provided in paragraph 3, nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Commissioners or the harbour master at the date of making of this Order.