

SCHEDULES

SCHEDULE 10

Article 63

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

General

1.—(1) The provisions of this Schedule shall, unless otherwise agreed in writing between the Harbour Authority and the Environment Agency (“the Agency”), have effect for the protection of the Agency.

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

Commencement Information

II Sch. 10 para. 1 in force at 16.5.2008, see [art. 1](#)

Definitions applying to this Schedule

2. In this Schedule—

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

“construction” includes maintenance and “construct” and “constructed” shall be construed accordingly;

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

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

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

“excluded work” means a tidal work as defined in article 2(1) and any work referred to in article 13 (power to dredge);

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

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

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

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

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

Commencement Information

I2 Sch. 10 para. 2 in force at 16.5.2008, see [art. 1](#)

Tidal works

3.—(1) At the same time as submitting any plans and sections for any tidal work or operation to the PLA in accordance with paragraph 2 of Schedule 8, the Harbour Authority shall provide such plans and sections to the Agency and at the same time as the Harbour Authority provides any further particulars to the PLA pursuant to paragraph 2 of Schedule 8, the Harbour Authority shall provide such further particulars to the Agency.

- (2) Within 21 days of the later of—
 - (a) the receipt of such plans and sections; or
 - (b) the receipt of any such further particulars,

the Agency shall provide the PLA with its opinion on the plans and sections and further particulars (if any).

Commencement Information

I3 Sch. 10 para. 3 in force at 16.5.2008, see [art. 1](#)

Pre-conditions to commencing specified work

4.—(1) Before beginning to construct any specified work other than an excluded work, the Harbour Authority shall submit to the Agency plans of the specified work and such further particulars available to it as the Agency may reasonably require.

(2) Any specified work other than an excluded work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or settled in accordance with paragraph 13(1).

- (3) Any approval of the Agency required under this paragraph—
 - (a) 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; and
 - (b) may be given subject to such reasonable requirements as the Agency may impose for—
 - (i) the protection of any drainage work;
 - (ii) the protection of the fishery;
 - (iii) the protection of water resources;

- (iv) the prevention of flooding;
 - (v) the prevention of pollution; and
 - (vi) the discharge of its environmental and recreational statutory duties (so far as may be necessary).
- (4) Without prejudice to the generality of sub-paragraphs (1), (2) and (3), the requirements which the Agency may impose under those sub-paragraphs include—
- (a) conditions as to the time and the manner in which any other work or operation is to be carried out; or
 - (b) conditions requiring the Harbour Authority at its own expense to—
 - (i) construct such protective works (“the 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 a specified work;
 - (ii) provide or maintain means of access for the Agency; or
 - (iii) provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.
- (5) The Harbour Authority shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—
- (a) in the examination or approval of plans under this paragraph; or
 - (b) in the inspection of the construction of the specified works affecting a drainage work or any protective works required by the Agency under this Schedule.
- (6) Subject to sub-paragraphs (1) and (2), any specified work other than an excluded work and all protective works, shall be constructed—
- (a) within such period (if any) as the Agency may approve at the time of approval or, upon an application by the Harbour Authority, may approve afterwards;
 - (b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
 - (c) to the reasonable satisfaction of the Agency;
- and the Agency shall be entitled by its officer to watch and inspect the construction of such works.
- (7) The Harbour Authority shall give to the Agency not less than 14 days’ notice in writing of its intention to commence construction of any specified work other than an excluded work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.
- (8) If any part of a specified work other than an excluded work comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Harbour Authority at the Harbour Authority’s own expense to comply with the requirements of this Schedule or, if the Harbour Authority so elects and the Agency consents in writing to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent as the Agency reasonably requires.
- (9) Subject to sub-paragraph (10), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (8) is served on the Harbour Authority, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works

specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Harbour Authority.

(10) In the event of any dispute as to whether sub-paragraph (8) is properly applicable to any work in respect of which notice has been served under that sub-paragraph or as to the reasonableness of the requirements of such a notice, the Agency shall not, except in a case of emergency, exercise the powers conferred by sub-paragraph (9) until the dispute has been finally determined.

Commencement Information

I4 Sch. 10 para. 4 in force at 16.5.2008, see [art. 1](#)

Survey of any drainage work liable to be affected by a specified work

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

Commencement Information

I5 Sch. 10 para. 5 in force at 16.5.2008, see [art. 1](#)

Maintenance by Harbour Authority of drainage works within its jurisdiction

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

(2) The obligation imposed on the Harbour Authority under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such drainage work and is not precluded by the exercise of the powers of the Order from doing so.

(3) If any drainage work referred to in sub-paragraph (1) is not maintained in good repair and free from obstruction the Agency may by notice in writing require the Harbour Authority to repair and restore the drainage work, or any part thereof, or (if the Harbour Authority so elects and the Agency in writing consents to remove the specified work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of a specified work is served under sub-paragraph (3) on the Harbour Authority, the Harbour Authority has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Harbour Authority.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not, except in a case of emergency, exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

Commencement Information

16 Sch. 10 para. 6 in force at 16.5.2008, see [art. 1](#)

Impairment of efficiency of drainage work for flood defence

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

Commencement Information

17 Sch. 10 para. 7 in force at 16.5.2008, see [art. 1](#)

Damage to flood defences managed by the Agency

8.—(1) If, during the construction of a specified work or within 10 years after the completion of a specified work, there is caused or created an accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage, or reasonable expectation of damage, to flood defences, the Harbour Authority shall, if it is proven to have caused the damage or reasonable expectation of damage, remedy to the extent of its causation such accumulation, erosion, alteration of tidal flow or littoral drift to the extent and commensurate with the damage it is proven to have caused, in the manner specified in sub-paragraph (4) and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost of such work from the Harbour Authority.

(2) Should any accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage or reasonable expectation of damage, arise within the said period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift proven to be caused by the specified works shall from time to time be so remedied by the Harbour Authority during the said period of 10 years and at any time thereafter, save that the Harbour Authority's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further accumulation or erosion or alteration of the tidal flow or littoral drift.

(3) In sub-paragraphs (1) and (2), “damage” means, in the context of damage to flood defence capability or operation, any damage affecting the following—

- (a) the efficacy of flood defences;
- (b) the bed or banks of the river; or
- (c) the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(1).

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

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

(1) 1991 c. 57.

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- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency.

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

Commencement Information

18 Sch. 10 para. 8 in force at 16.5.2008, see [art. 1](#)

Protection of the fishery

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

(2) If by reason of—

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

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

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

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

Commencement Information

19 Sch. 10 para. 9 in force at 16.5.2008, see [art. 1](#)

Indemnity as to costs and expenses

10.—(1) The Harbour Authority shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain in the inspection, for the purposes of compliance with this Schedule, of the construction of the specified works or protective works required by the Agency under this Schedule.

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

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery in so far as it has not already been compensated;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of land adjoining the authorised works; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater;

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

(3) The Agency shall give to the Harbour Authority reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the consent of the Harbour Authority which shall not be unreasonably withheld and if such consent is not given by the Harbour Authority, the Agency shall diligently defend such claim or demand.

Commencement Information

110 Sch. 10 para. 10 in force at 16.5.2008, see [art. 1](#)

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

Commencement Information

111 Sch. 10 para. 11 in force at 16.5.2008, see [art. 1](#)

Approvals deemed and not deemed

12.—(1) For the purposes of section 109 of the Water Resources Act 1991 (structures in, over or under watercourses) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a consent under that section.

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

(3) Subject to sub-paragraphs (1) and (2) and except as otherwise provided by this Schedule, nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991, the Salmon and Freshwater Fisheries Act 1975⁽³⁾, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency.

(2) 1991 c.59.

(3) 1975 c. 51.

Changes to legislation: There are currently no known outstanding effects for the The London Gateway Port Harbour Empowerment Order 2008, SCHEDULE 10. (See end of Document for details)

Commencement Information

I12 Sch. 10 para. 12 in force at 16.5.2008, see [art. 1](#)

Arbitration in respect of differences arising under this Schedule between the parties

13.—(1) Provided the Harbour Authority and the Agency agree, any difference arising between the Harbour Authority and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration in the manner provided by article 66 (arbitration) but where the Harbour Authority and the Agency do not agree, any difference shall be determined by the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs, acting jointly.

(2) In the case of a conflict between any approval or consent given by the Agency pursuant to this Schedule and any condition or restriction imposed on any approval by the Secretary of State under article 16 (tidal works not to be constructed without approval of the Secretary of State), the terms of the approval of the Secretary of State shall prevail.

Commencement Information

I13 Sch. 10 para. 13 in force at 16.5.2008, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The London Gateway Port Harbour Empowerment Order 2008, SCHEDULE 10.