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STATUTORY INSTRUMENTS

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**2008 No. 969**

**The River Humber (Upper Burcom  
Tidal Stream Generator) Order 2008**

**PART 2**

**WORKS**

Protection of navigation

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

5.—(1) A tidal work shall not be constructed or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed or altered in contravention of this article or any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the undertaker at its own expense to remove the tidal work or any part of it and restore the site to its former condition; and
- (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 undertaker.

**Provision against danger to navigation**

6.—(1) In case of damage to, or destruction or decay of, a tidal work or any part thereof the undertaker shall as soon as reasonably practicable—

- (a) notify A. B. Ports; and
- (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A. B. Ports may from time to time direct.

(2) If it appears to A. B. Ports urgently necessary to do so in order to secure the safe navigation of the river by all vessels, it may lay down such buoys and exhibit such lights and take such other steps for preventing danger to navigation as A. B. Ports may direct are reasonably necessary.

(3) Any expenditure incurred by A. B. Ports in consequence of it exercising powers under paragraph (2) shall be recoverable from the undertaker.

**Abatement of works abandoned or decayed**

7.—(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 undertaker at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the work to its former condition, to such an extent and within such limits as the Secretary of State or A. B. Ports may specify in the notice.

(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 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 of it, in any notice under this article.

(3) This article shall not apply to any decommissioning of the authorised works in accordance with a decommissioning plan approved by the Secretary of State under any condition imposed in a licence granted under section 5 of the Food and Environment Protection Act 1985(1).

(4) If there is any inconsistency between any requirements of the Secretary of State and A. B. Ports under article 7(1) or article 7(2) the requirement of the Secretary of State shall prevail.

### **Survey of tidal works**

**8.**—(1) The Secretary of State may at any time, if he deems it expedient, 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 in any such survey and examination shall be recoverable from the undertaker.

(2) Subject to paragraph (3) such surveys shall not be ordered more frequently than once a year, and before ordering such a survey the Secretary of State shall—

(a) consult the undertaker in order to establish what relevant survey information is already available; and

(b) give the undertaker an opportunity to carry out the survey itself.

(3) Paragraph (2) shall not apply in an emergency.

(4) Paragraphs (1) to (3) apply to A. B. Ports as if it were the Secretary of State.

(5) A. B. Ports' annual survey of the river in the performance of its functions as navigation authority shall not be treated as a survey ordered by A. B. Ports under this article.

### **Permanent lights and navigational safety aids**

**9.** After the completion of the tidal works the undertaker shall exhibit every night from sunset to sunrise such lights, if any, and shall provide such markers, if any, and take such other steps for the prevention of danger to navigation as A. B. Ports may from time to time direct.

### **Lights on tidal works during construction**

**10.** The undertaker shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying, reconstruction or extension of the work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as A. B. Ports may from time to time direct.

### **Execution of works in default**

**11.**—(1) If, on the expiration of 30 days from the date when a notice under article 5(2)(a) or 7(1) is served upon the undertaker it has failed, without reasonable excuse, to comply with the requirements of the notice, the Secretary of State or A. B. Ports (as the case may be) may execute the works specified in the notice.

(2) Any expenditure incurred by the Secretary of State or A. B. Ports (as the case may be) in so doing shall be recoverable from the undertaker.

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(1) 1985 c.48.

## **Offences**

12. If the undertaker, without reasonable excuse, fails to—
- (a) comply with a direction given under article 6, 9 or 10; or
  - (b) give notification as required by article 6,

it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.