

SCHEDULE 3

Model provisions for harbours

Miscellaneous and general

Deemed consent under section 34 of the Coast Protection Act 1949

44. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(1) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.

Deemed licence under Part 2 of the Food and Environment Protection Act 1985

45. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(2) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.

Felling or lopping of trees

46.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Trees subject to tree preservation orders

47.—(1) The undertaker may fell or lop any tree described in Schedule J and identified on the [insert name] plan, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to passengers or other persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(1) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.

(2) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.

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(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Railway and navigation undertakings

48.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph "navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

Application of landlord and tenant law

49.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

50. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Defence to proceedings in respect of statutory nuisance

51.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(3) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(4); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in requirement 25; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

Protection of interests

52. Schedule L to this Order has effect.

Saving for Trinity House

53. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

54.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(5) (general development orders) (“the Habitats Regulations”) shall not apply to any planning permission which

(3) 1990 c.43. There are amendments to this Act which are not relevant to this Order.
(4) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the [Environmental Protection Act 1990, c.25](#). There are other amendments to the 1974 Act which are not relevant to this Order.
(5) 1994/2716 (“the Habitats Regulations”). Relevant amendments were made by [SI 2007/1843](#), [SSI 2007/80](#), and [SSI 2007/349](#). The Habitats Regulations make provision for the purpose of implementing, for Great Britain, Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (OJNo. L 206, 22.07.92, p.7) as last amended by Council Directive [2006/105/EC](#) of 20 November 2006 adapting Directives [79/409/EEC](#), [92/43/EEC](#), [97/68/EC](#), [2001/80/EC](#) and [2001/81/EC](#) in the field of environment, by reason of the accession of Bulgaria and Romania (OJ No. L 363, 20.12.06, p.368).

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relates to the works authorised by article 7 (subsidiary works) and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

- (2) Paragraph (1) does not apply if and to the extent that those works—
- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations (assessment of implications for European Site) in connection with the making of this Order; and
 - (b) are not the subject of a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Planning, etc. jurisdiction

55.—(1) During the period beginning with the date when this Order comes into force and beginning on the accretion date, the area within the Order limits shall, for the purposes of the Control of Pollution Act 1974⁽⁶⁾ and the Town and Country Planning Act 1990⁽⁷⁾, be annexed to and incorporated with the district of *[insert name of relevant planning authority]*.

(2) In this article “accretion date” means the date when the works authorised by this Order have been completed or, if earlier, the date when the benefits and rights granted by this Order cease to have effect pursuant to article 4 (period for completion of work).

Certification of plans etc

56.—(1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—

- (a) the book of reference;
- (b) the land plan;
- (c) the rights plan;
- (d) the works plan;
- (e) the sections; and
- (f) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

57. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *[insert appropriate body]*.

⁽⁶⁾ 1974 c.40.

⁽⁷⁾ 1990 c.8.