

SCHEDULE 3

Article 20

FOR THE PROTECTION OF FORTH PORTS

Obstruction in the river

1. If any pile, stump or other obstruction to navigation in the river becomes exposed in the course of constructing any works or dredging (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the Company shall, as soon as reasonably practicable after receipt of notice in writing from Forth Ports requiring such action, remove it from the river or, if it is not reasonably practicable to remove it—

- (a) cut off the obstruction at such level below the bed of the river as Forth Ports may reasonably direct; or
- (b) take such other steps to make the obstruction safe as Forth Ports may reasonably require.

Removal, etc. of Forth Ports' moorings and buoys

2. If—

- (a) by reason of the construction of any tidal work or dredging it is reasonably necessary for Forth Ports to incur costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by Forth Ports, or laying down and removing replacement moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
- (b) Forth Ports gives the Company not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the Company may make in response to the notice within 14 days of the receipt of the notice,

the Company shall pay the costs reasonably so incurred by Forth Ports.

Removal of temporary works

3. On completion of the construction of any part of a permanent work in the river, the Company shall as soon as practicable remove—

- (a) any temporary tidal work carried out only for the purposes of part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and shall make good the site to the reasonable satisfaction of Forth Ports.

Facilities for navigation

4.—(1) The Company shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of Forth Ports, and shall ensure that access to such aids remains available during and following construction of any tidal work.

(2) The Company shall provide at any tidal work, or must afford reasonably facilities at such works (including an electricity supply) for Forth Ports to provide at the Company's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation in the river as Forth Ports may reasonably deem necessary by reason of the construction of any such tidal work, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The Company shall comply with the directions of the Forth Ports' harbour master from time to time with regard to the lighting on the tidal works or within the port, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the river.

Indemnity

5.—(1) The Company is responsible for and must make good to Forth Ports all financial costs or losses not otherwise provided for in this Schedule which may reasonably be incurred or suffered by Forth Ports, by reason of—

- (a) the construction or operation of the works or the failure of the works;
- (b) anything done in relation to a mooring or buoy; or
- (c) any act or omission of the Company, its employees, contractors or agents or others whilst engaged upon the construction or operation of the works or dealing with any failure of the works,

and the Company must indemnify Forth Ports from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by Forth Ports on behalf of the Company; or
- (b) by the Company, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by Forth Ports, or in a manner approved by Forth Ports, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of Forth Ports or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this paragraph.

(3) Forth Ports shall give the Company reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand may be made without the prior consent of the Company.

Dispute resolution

6.—(1) Any disputes between the Company and Forth Ports about matters in this Schedule should be referred to and settled by an arbiter.

- (2) The arbiter shall be appointed by the Chairman of the Chartered Institute of Arbitrators.
- (3) The Arbitration (Scotland) Act 2010⁽¹⁾ shall govern any such arbitration.

(1) 2010 asp 1.