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## SCHEDULE

### WESTERN ISLES COUNCIL (BERNERAY CAUSEWAY)

#### PART III

##### MISCELLANEOUS

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

- 8 (1) A tidal work shall not be constructed, executed, renewed, replaced 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, executed, renewed, replaced or altered in contravention of this section—
- (a) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary so to do, he may himself 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 Council.

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

- 9 (1) The Council shall at or near a tidal work during the whole time of the construction, execution, renewal, replacement or alteration thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

###### *Permanent lights on tidal works*

- 10 (1) After the completion of a tidal work the Council shall exhibit every night from sunset to sunrise such lights, if any, and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the Council fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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### *Survey of tidal works*

- 11 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 and execute the work and any expenditure incurred by him in such survey and examination shall be recoverable from the Council.

### *Provision against danger to navigation*

- 12 (1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Council shall forthwith notify the Commissioners of Northern Lighthouses and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Commissioners of Northern Lighthouses shall from time to time direct.
- (2) If the Council fail to notify the Commissioners of Northern Lighthouses as required by this section or to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### *Abatement of works abandoned or decayed*

- 13 (1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.
- (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 may include that part of the work, or any portion thereof, in any notice under this section.
- (3) If on the expiration of 30 days from the date when a notice under this section is served upon the Council, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

### *Saving for certain enactments, etc*

- 14 (1) Nothing in this Order affects the operation of—
- (a) the Control of Pollution Act 1974;
  - (b) any of the relevant statutory provisions as defined in section 53 of the Health and Safety at Work etc. Act 1974;
  - (c) Part II of the Food and Environment Protection Act 1985;
  - (d) the Environmental Protection Act 1990;
  - (e) the Environment Act 1995.
- (2) Nothing in this Order affects prejudicially the jurisdiction or authority of the Commissioners of Northern Lighthouses.

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*Saving for Coast Protection Act 1949*

- 15 Nothing in this Order shall exempt the Council from the provisions of Part I of the Coast Protection Act 1949.

*For protection of Scottish Hydro-Electric plc*

- 16 For the protection of Scottish Hydro-Electric plc the following provisions shall, save to the extent that the company may release the Council therefrom, apply and have effect:—

- (1) In this section unless the subject or context otherwise requires—
- “apparatus” means—
    - (a) any electrical plant or electric line as respectively defined in section 64 of the Electricity Act 1989; and
    - (b) any meter used for ascertaining the quantity of electricity supplied to any premises, not being a meter which is under the control of a consumer;
  - “the company” means Scottish Hydro-Electric plc;
  - “in” in a context referring to apparatus includes under, over, across, along or upon;
  - “plan” includes a section and description;
  - “position” includes depth.
- (2) (a) Nothing in this Order shall relieve the Council from liability for damage caused by them to any apparatus in the exercise of the powers conferred on them by this Order and the Council shall indemnify the company against all claims, demands, costs, damages and expenses made or taken against or recovered from or incurred by the company by reason or in consequence of any damage done by the Council to any apparatus or of any interruption in the supply by the company of electricity which may without the written authority of the company be in any way occasioned either by reason of the exercise of any of the powers of this Order or by the acts or defaults (in, or in connection with, such exercise) of the Council.
- (b) If in consequence of the exercise by the Council of the powers of this Order the access to any apparatus is materially obstructed, the Council shall provide an alternative means of access to such apparatus.
- (3) If the Council in exercise of the powers of sections 3, 4 or 6 above require to cross over or under, remove, alter or otherwise interfere with any apparatus, or if the exercise of such powers is likely to affect any apparatus, the Council shall—
- (a) give to the company not less than 28 days' prior notice in writing of such requirement or (as the case may be) of their intention to exercise such powers, together with a plan of the work proposed, and shall execute the work only in accordance with such plans and in accordance with such reasonable requirements as may within 21 days of the receipt of the plan be made by the company, and the company may under such requirements alter or otherwise protect the apparatus or provide alternative apparatus adequate to enable them to fulfil their statutory functions not less efficiently than before (hereinafter referred to as “alternative apparatus”);
  - (b) afford to the company, where possible, any necessary facilities and rights for the construction, use, maintenance, repair, renewal and inspection of any alternative apparatus;

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- (c) pay to the company the expense reasonably incurred by them in and in connection with removing, re-laying, replacing, altering or protecting the apparatus or providing alternative apparatus less (in a case where alternative apparatus is provided) the value of any apparatus removed pursuant to this section.
- (4) Alternative apparatus, if provided under this section shall be constructed in such manner and in such line or position as may be agreed between the Council and the company, and no apparatus shall be removed, altered or interfered with until any protective works required have been carried out or until alternative apparatus required has been provided and is operating to the reasonable satisfaction of the company.
- (5)
  - (a) Any difference arising between the Council and the company under this section shall be referred to and determined by an arbiter to be mutually agreed upon, or failing such agreement to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Electrical Engineers.
  - (b) In settling any difference under this section the arbiter shall have regard to any duties or obligations which the company may be under in respect of any apparatus and may if he thinks fit require the Council to execute within the limits of deviation any temporary or other works so as to avoid so far as may be reasonably possible interference with any purpose for which the apparatus is used.

#### *Crown rights*

- 17 (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with, any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—
  - (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.
- (2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.