

SCHEDULE 12

Protective provisions

PART 5

Protection for Associated British Ports

1. The provisions of this Part have effect for the protection of A. B. Ports unless otherwise agreed in writing between the undertaker and A. B. Ports

Commencement Information

I1 Sch. 12 Pt. 5 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“A. B. Ports” means Associated British Ports;

“accumulation” means any accumulation of silt or other material that constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal (including the removal of the electrical circuits comprised in Work Nos. 6A and 6B); and “construct” and “constructed” must be construed accordingly;

“erosion” means any erosion of the bed or banks of the River Humber or of any jetty or other structure of whatever nature;

“plans” includes sections, descriptions, drawings and specifications;

“relevant undertaker” means—

(a) in relation to specified works that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;

(b) in relation to specified works that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and

(c) in relation to specified works that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea;

“specified works” means so much of Work Nos. 6A and 6B and any associated development or ancillary works as are within A. B. Ports’ jurisdiction.

Commencement Information

I2 Sch. 12 Pt. 5 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

3. The undertaker must not under the powers of this Order acquire land or acquire new rights over land held by A. B. Ports for the purpose of its statutory undertaking without the consent of A. B. Ports, which consent must not be unreasonably withheld but may be given subject to reasonable conditions.

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Commencement Information

I3 Sch. 12 Pt. 5 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Before commencing the construction of the specified works, the relevant undertaker must furnish to A. B. Ports for its approval, which it must not unreasonably withhold, plans of the specified works showing the general mode of construction, depth and method of trenching and possible cable protection; and the specified works—

- (a) must not be constructed otherwise than in accordance with the plans approved by A. B. Ports; and
- (b) must be executed to the reasonable satisfaction of A. B. Ports.

(2) When submitting plans in respect of the specified works to the Secretary of State pursuant to article 40 (certification of plans, etc.), the relevant undertaker must—

- (a) send a copy of those plans to A. B. Ports; and
- (b) on receipt of approval of plans or of any conditions or restrictions imposed by the Secretary of State, send a copy to A. B. Ports.

(3) If A. B. Ports fails to express its disapproval of any plans within 56 days after they have been furnished to it under sub-paragraph (1), it is deemed to have approved them.

Commencement Information

I4 Sch. 12 Pt. 5 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. The relevant undertaker must give to A. B. Ports—

- (a) not less than 14 days' written notice of its intention to commence the construction of the specified works; and
- (b) not more than 14 days after completion of the construction, written notice of such completion.

Commencement Information

I5 Sch. 12 Pt. 5 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

6. The relevant undertaker must at all reasonable times during construction of the specified works and afterwards allow A. B. Ports, its servants and agents, access to the specified works and all reasonable facilities for inspection of the specified works.

Commencement Information

I6 Sch. 12 Pt. 5 para. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

7.—(1) After the purpose of any temporary works has been accomplished, the relevant undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from A. B. Ports requiring the relevant undertaker so to do, remove any such temporary works or any materials relating to them that may have been placed below the level of high water by or on behalf of the relevant undertaker.

(2) If the relevant undertaker fails to do so within a reasonable period after receiving such notice, A. B. Ports may remove them and may recover the reasonable costs of doing so from the relevant undertaker.

Commencement Information

I7 Sch. 12 Pt. 5 para. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

8.—(1) If during the construction of the specified works it is agreed, or in the absence of agreement it is proved to the satisfaction of an arbitrator appointed under article 41 (arbitration), that any accumulation or erosion has been caused wholly or partly by the construction of the specified works or exercise of powers under this Order, the relevant undertaker, if so requested by A. B. Ports acting reasonably, must remedy the accumulation or erosion to the extent attributable to the construction or exercise of powers.

(2) If the relevant undertaker refuses or fails to do so, A. B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the relevant undertaker.

Commencement Information

I8 Sch. 12 Pt. 5 para. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

9. The relevant undertaker must pay to A. B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of the specified works.

Commencement Information

I9 Sch. 12 Pt. 5 para. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

10.—(1) Without limiting the other provisions of this Part, the relevant undertaker must indemnify A. B. Ports in respect of all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of A. B. Ports) that may reasonably be incurred by or occasioned to A. B. Ports by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of the specified works by A. B. Ports or its duly authorised representative;
- (b) the construction or failure of the specified works or the undertaking by A. B. Ports of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of A. B. Ports arising from such construction or failure; or
- (c) any act or omission of the relevant undertaker or its servants or agents whilst engaged in the construction of any of the specified works.

(2) Without limiting sub-paragraph (1), the relevant undertaker must indemnify A. B. Ports in respect of all claims and demands arising out of, or in connection with, such construction, or failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph imposes any liability on the relevant undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraph (1) or (2) are attributable to negligence on the part of A. B. Ports or of any person in its employ or of its contractors or agents.

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(4) A. B. Ports must give to the relevant undertaker notice in writing of any claim or demand for which the relevant undertaker may be liable under this paragraph, and no settlement or compromise of any such claim or demand may be made without the consent in writing of the relevant undertaker.

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Commencement Information

I10 Sch. 12 Pt. 5 para. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

11. The fact that any work or thing has been executed or done with the consent of A. B. Ports and in accordance with any conditions or restrictions prescribed by A. B. Ports or in accordance with any plans approved or deemed to be approved by A. B. Ports or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by the Secretary of State does not relieve the relevant undertaker from any liability under this Part.

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Commencement Information

I11 Sch. 12 Pt. 5 para. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

12. With the exception of any duty owed by A. B. Ports to the relevant undertaker expressly provided for in this Part, nothing in this Order must be construed as imposing on A. B. Ports, either directly or indirectly, any form of duty or liability to which A. B. Ports would not otherwise be subject which is enforceable by proceedings before any court.

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Commencement Information

I12 Sch. 12 Pt. 5 para. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

13. Nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A. B. Ports at the commencement of this Order or any title of A. B. Ports in, to or over any lands or foreshore held or acquired by it.

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Commencement Information

I13 Sch. 12 Pt. 5 para. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)