

## Operation of the new bridge

40.—(1) The undertaker must operate the new bridge in accordance with the Scheme of Operation.

(2) The Scheme of Operation may be varied or replaced by the undertaker at any ~~time, following consultation with the Navigation Working Group and with the consent of the harbour authority (such consent not to be unreasonably withheld) or following a request by the harbour authority.~~ time—

- (a) on the undertaker's own volition; or
- (b) following receipt of a request by the harbour authority for the undertaker to vary or replace the Scheme of Operation, which the undertaker must not unreasonably refuse to agree to, or then delay in proceeding with under this article.

(3) Before ~~proposing any variation or replacement of varying or replacing~~ the Scheme of Operation under paragraph (2) the undertaker must ~~carry out a review of the navigation risk assessment under Requirement 11(4) and, if the undertaker considers, in consultation with the harbour authority, that circumstances require, update it.~~ take the following sequential steps —

- (a) consider in accordance with Requirement 11 if the most recent version of the navigation risk assessment prepared by the undertaker and approved under Requirement 11 needs to be updated on account of the proposed variation to or replacement of the Scheme of Operation;
- (b) if the undertaker considers in accordance with Requirement 11 that the navigation risk assessment does need to be updated on account of the proposed variation to or replacement of the Scheme of Operation, the undertaker must update the navigation risk assessment and obtain approval of it under Requirement 11;
- (c) consult the Navigation Working Group on the proposed variation to or replacement of the Scheme of Operation and have regard to any representations received by the undertaker from the Navigation Working Group; and
- (d) obtain the consent of the harbour authority (which must not be unreasonably withheld) or, in accordance with paragraph (4), the consent of the Secretary of State, to the undertaker's proposed variation to or replacement of the Scheme of Operation.

~~(3) When proposing any variation or replacement of the Scheme of Operation under paragraph (2), the undertaker must provide to the harbour authority and the Navigation Working Group information relating to the outcome of the review of the navigation risk assessment carried out by virtue of paragraph (3) including (if applicable) the updated risk assessment.~~

~~(4) If the consent of the harbour authority required under paragraph (2) is not given—~~

- (a) ~~not given~~ within 21–28 days of the submission application by the undertaker to the harbour authority of a varied under paragraph (3)(d) for its consent to the undertaker's proposed variation to or replacement scheme of operation; and of the Scheme of Operation; or
- (b) before the expiration of any extended deadline for that consent agreed to by the undertaker.
- ~~(b) the undertaker has not granted the harbour authority an extension of time to give its consent;~~

then the proposed ~~varied variation to~~ or replacement ~~scheme of operation of the Scheme of Operation~~ must be submitted by the undertaker to the Secretary of State for approval.

~~(5) Any~~ submission by the undertaker to the Secretary of State under paragraph (4) must also include a report setting out any ~~comments~~ representations of the Navigation Working Group and the harbour authority given in response to the undertaker proposing a variation to or replacement of the Scheme of Operation under paragraph (2).

~~(6) Following~~ submission of the ~~varied proposed variation to~~ or replacement ~~scheme of operation of the Scheme of Operation~~ to the Secretary of State for approval under paragraph (4),

the harbour authority may still grant its consent to the ~~varied~~proposed variation to or replacement ~~scheme of operation of the Scheme of Operation~~ at any time prior to the Secretary of State's determination, but if the harbour authority does so it must on the same day inform the undertaker and the Secretary of State of its consent.

(7) ~~(7)~~The undertaker must take such steps as it considers appropriate to publish details of the ~~scheme of operation, Scheme of Operation~~ not less than 21 days prior to the new bridge opening for public use or, in relation to any ~~scheme of operation varied or replaced~~variation to or replacement of the Scheme of Operation under paragraph (2), at such times and with such prior notice as the undertaker considers appropriate in consultation with the harbour authority.

(8) ~~(8)~~Article 59 (arbitration) does not apply to any dispute arising under this article: other than any dispute arising under paragraph (2)(b).