

**THE PROPOSED ASSOCIATED BRITISH PORTS (EASTERN RO-RO TERMINAL)  
DEVELOPMENT CONSENT ORDER**

**DEADLINE 7**

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Submissions on behalf of the Harbour Master Humber regarding:

Amendments to the protective provisions for the benefit of the SCNA suggested by HMH  
following ISH5 and ISH6;

Comments on the ExA's proposed changes to Requirement 18 and paragraph 22 and  
introduction of Requirement 18A

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Author	Winckworth Sherwood LLP
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## **1. Introduction**

1.1 In this document, HMH addresses the following matters:

- 1.1.1 amendments to the protective provisions for the benefit of the SCNA suggested by HMH following ISH5 and ISH6;
- 1.1.2 proposed introduction by ExA of new Requirement 18A “Operating limits for Berths 1, 2 and 3”;
- 1.1.3 proposed changes by ExA to Requirement 18; and
- 1.1.4 new right to appeal a direction of the SCNA proposed by ExA - changes to paragraphs 19 and 22 of Schedule 2.

## **2. Proposed amendments to the protective provisions for the SCNA**

2.1 Revised draft protective provisions for the SCNA are shown (tracked) in the Appendix to this document and explained below:

- 2.1.1 The amendments proposed to paragraph 16 (Operating Procedures) are suggested by HMH to address any concerns of the ExA that the views of the IOT Operators would not be taken into account when operating procedures for the IERRT are drawn up by the undertaker and approved by the SCNA.
- 2.1.2 The suggested amendments recognise that, in practice, the SCNA, through its officer and appointee HMH, will carry out its own risk assessments of the Applicant’s proposals as part of the Humber MSMS and may well impose conditions on the approval for the protection of the Humber (which could encompass arrangements for the soft start to operations, described to the ExA by HMH.)
- 2.1.3 It is suggested that paragraph 18 (disputes) can sensibly be deleted. The reasons for this are set out in detail in HMH’s response to Action Point 12 from ISH6 (in HMH28).

## **3. New Requirement 18A – Operating limits for Berths 1, 2 and 3**

3.1 The new provision put forward by the Examining Authority would provide for the following:

- (1) That a berth forming part of the new development must not be brought into use until HMH or the DM or both, acting on behalf of the relevant SHA or SHAs, have made or published an initial direction or notice specifying the limits for that berth. It goes on to provide that each berth must be operated in accordance with that initial direction or notice until those directions are superseded by general directions (made by whichever is/are the relevant SHAs.)
- (2) Notwithstanding paragraph (1), operational trials held under the supervision of the HMH/DM or both may be undertaken prior to the publication of the initial direction or notice.

3.2 The new provision is intended to ensure that the DCO addresses the availability of initial operating limits for the proposed IERRT berths. The reason given for this, is the concerns around navigational safety raised by some interested parties. However, the HMH has been at pains to explain to the Examining Authority that such concerns are entirely baseless. No evidence whatsoever has been adduced to the Examining Authority by any

of the Interested Parties to suggest that the statutory powers of the SHAs, HMH or DM have been exercised unreasonably or capriciously in the past to the detriment of navigational safety or that the safety and convenience of the IOT terminal or other users of the river might wilfully be compromised in the future.

- 3.3 In the absence of any foundation to such concerns, there is no reason to justify stipulating a Grampian-style condition to address navigational safety and it cannot be said to be necessary. As explained in the Joint Note submitted pursuant to Action Point 6 from ISH5, it is not considered appropriate to approach the DCO on the basis that the SHAs and their statutory appointees would not exercise their statutory powers properly and it is therefore considered unnecessary to include a provision in the order expressly to deal with concerns that they may not do so.
- 3.4 The ExA notes the previous submissions of the HMH that a Requirement expressly defining operating limits for the berths or setting out a mechanism for establishing such limits, therefore, does not need to be incorporated into the DCO.
- 3.5 The introduction of a Grampian-style condition of this kind would be novel in this context, and HMH does not consider it to be necessary or appropriate. Parliament has already conferred powers on those bodies it regards as fit and proper persons to have full discretion for decisions as to navigational safety on the Humber and HMH can see no justification for interfering with the way that discretion is exercised.
- 3.6 Notwithstanding the submissions set out above, the key consideration for HMH is that his hands must not be tied, and he should be free to impose, loosen or tighten operating parameters for the IERRT for specific vessels in specific conditions as required and consistent with the legal function of the conservancy authority of regulating the passage of vessels in the Humber. HMH is concerned that paragraph (1) of the proposed Requirement would not provide this, and he notes that the condition is expressed in terms of operating limits for particular berths rather than minimum operating parameters for specific vessels visiting each berth in specific conditions.
- 3.7 HMH has the following further concerns about the proposed Requirement:
- 3.7.1 HMH has explained that:
- (i) users of the rivers generally do what they are advised to do by HES and the DM without the need for formal directions; and
  - (ii) the process for making general directions, including third party consultation, would make it difficult to make the kind of short term changes associated with the soft start to operational use of the IERRT.
- 3.8 On point (ii) above, it is unclear whether, under paragraph (1) of the proposed new requirement, the initial direction/notice is intended to be a General Direction or not. The drafting refers to “direction/notice” but use of the term “revised General Directions” later in the same paragraph suggests that the Examining Authority does intend the initial operating parameters to be imposed by way of General Directions.
- 3.9 Similarly, the requirement to make a further General Direction before any changes can be made would be more onerous than the existing arrangements on the Humber that work well. Were the Secretary of State to consider that a Grampian-style condition is appropriate, HMH suggests that he should be at liberty to update the operating parameters for the IERRT at his discretion and to publish such updates as they occur, as he would in any other case.

- 3.10 Although paragraph (2) is intended to allow for the “slow start” process by which operating parameters for the IERRT berths are established, HMH is concerned by the fact that the Examining Authority appears to envisage that these trials would be carried out in advance of the commencement of operational use of the IERRT berth concerned. In other words, it suggests that the vessels used for the trials would be unable to use the IERRT operationally during this period for the unloading and loading of cargo. This is not how a soft start works in practice. The soft start would involve simulations, but the real-life test berthing manoeuvres would be carried out by vessels using the IERRT operationally in carefully controlled conditions.
- 3.11 If - notwithstanding HMH’s submissions, and the explanation of the river regime under which the Immingham Dockmaster has responsibility for the actual berthing and unberthing of vessels once in the Port of Immingham, provided in his previous submissions and most recently the joint note submitted at D7 in response to Action Point 6 - the Examining Authority considers that it would be both necessary and reasonable for further controls by the SCNA to be stipulated in the DCO, HMH considers that the following text would be preferable:

#### **Operating limits for Berths 1, 2 and 3**

- 18A —(1) The undertaker may not commence marine commercial operations until the Statutory Conservancy and Navigation Authority has published guidance setting out a written statement of safe operating procedures for arrival at and departure from the authorised development for particular vessels and/or classes of vessels.
- (2) The Statutory Conservancy and Harbour Authority must not publish the guidance referred to in subparagraph (1) unless it has first consulted with the dockmaster for the Port of Immingham and the IOT Operators, as defined in Part 4 of Schedule 4, and has had due regard to their representations.
- (3) The undertaker must operate the authorised development only in accordance with the guidance referred to in paragraph (1) as amended and re-published from time to time.
- 3.12 There is, however, an issue with both the above wording and the original Requirement 18A proposed by the Examining Authority. Although expressed as Grampian conditions, both would change the existing power of the Immingham SHA to bring the berths into operational use by adding a restriction to the exercise of that power. Thus, any such condition would engage section 145 of the Planning Act 2008.

#### **4. Proposed changes to Requirement 18**

- 4.1 The proposed changes would turn the recommendation of the SCNA that impact protection measures be implemented into a direction that they must be built.
- 4.2 This departure is of significant concern to HMH. It is a novel measure that would go beyond the usual statutory functions of the SCNA and HMH. Historically, the SCNA/HMH would make recommendations on the basis that, should such recommendations be ignored, the consequences could be very significant for the undertaker in terms of the SCNA/HMH’s imposition of stringent operating controls and their potential impacts on the efficient operability of the infrastructure concerned.
- 4.3 HMH considers that the inclusion of this new provision to make a direction rather than a recommendation would set an operationally impractical precedent both for the proposed development and for future developments on the Humber. It is a proposal that he strongly wishes to avoid in that the HMH is confident that his existing powers to impose operating

controls if his recommendation is not acted upon will ensure the safety of the Humber and the IOT.

4.4 Further, it is left unclear whether the undertaker would retain discretion to build Works No. 3 without such direction.

**5. Proposed right to appeal a direction of the SCNA – changes to paragraphs 19 and 22 of Schedule 2**

5.1 The ExA proposes to amend paragraph 22 of Schedule 2 which deals with the discharge of requirements to provide that the undertaker (ABP) may appeal to the Secretary of State in the event on receipt of a direction from the SCNA to construct Work No. 3. For this to have effect, it proposes an amendment to paragraph 19 to provide that the SCNA is a discharging authority for the purposes of an appeal under paragraph 22.

5.2 HMH has set out above why he considers that it would not be appropriate for the SCNA to be responsible for directing that Impact Protection Measures are constructed, rather than making a recommendation (supported by its ability to mitigate the adverse effects of those measures not being implemented through restricting vessel movements to and from the IERRT).

5.3 Sub-paragraph (9) of paragraph 22 would make the decision of the adjudicator on an appeal final and binding on the parties.

5.4 HMH considers that such a right of appeal would not be appropriate. The first is this provision would have the effect of conferring a formal right of appeal to the Secretary of State from ABP acting in one capacity to ABP acting in another capacity. This would not be appropriate and does not reflect the current statutory procedure where the SCNA licences works brought forward by the port operator for works at Immingham. It is no part of the existing regime for the decisions of the SCNA to be subject to appeal and has not been imposed under other Humber legislation.

5.5 Further, even if it were not necessarily contrary to the existing statutory regime – the provision would be of limited, if any, practical effect given that HMH has his own statutory responsibility for the safety of navigation on the Humber and possesses statutory powers to issue directions which would effectively override an appeal process binding the SCNA by preventing vessels from entering the dock to berth.

5.6 The imposition of a legally binding appeals procedure would be an interference with the powers of the Immingham SHA and the SCNA. In the first instance, it amounts to a varying of the powers of the Immingham SHA by conferring on it a new power of appeal that it did not previously enjoy. In the case of the SCNA, the provision would change its powers by making it subject to appeals by the Immingham SHA whereas before it had an unfettered discretion, susceptible only to challenge by Judicial Review. As such, the inclusion of such provision in the DCO would require the consent of both SHAs pursuant to section 145 of the Planning Act 2008.

**Winckworth Sherwood LLP**

## APPENDIX

### SCHEDULE 1

Article 43

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF THE STATUTORY CONSERVANCY AND NAVIGATION AUTHORITY FOR THE HUMBER

##### Interpretation

1. In this Part of this Schedule—

“authorised works” means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;

“environmental document” means—

- (a) the environment statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Statutory Conservancy and Navigation Authority or Trinity House for the purposes of any tidal works approval under article 37 (provision against danger to navigation), article 38 (lights on tidal works during construction) or article 39 (permanent lights on tidal works);

“plans” includes sections, drawings, specifications, calculations and method statements;

“the river” means the River Humber; and

“the Statutory Conservancy and Navigation Authority” means for the purposes of this Protective Provision Associated British Ports in its capacity as statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868) and including in its role as competent harbour authority and local lighthouse authority for its statutory area.

##### General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Statutory Conservancy and Navigation Authority, have effect until the commencement of the operation of the authorised development for the protection of the Statutory Conservancy and Navigation Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of “tidal work” is taken to include—

- (a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and
- (b) any authorised work which affects the river or any functions of the Statutory Conservancy and Navigation Authority, whether or not that authorised work is within the limits of the Statutory Conservancy and Navigation Authority.

### **Tidal Works: approval of detailed design**

3.—(1) Prior to the commencement of the authorised development in the marine environment the undertaker must submit to the Statutory Conservancy and Navigation Authority plans and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—

- (a) traffic in, or the flow or regime of, the river;
- (b) the use of its operational land or the river for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(3) Requirements made under sub-paragraph (2) may include conditions as to—

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and
- (b) the expiry of the approval if the undertaker does not commence construction of the tidal work approved within a prescribed period.

(4) Before making a decision on any such approval, the Statutory Conservancy and Navigation Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(5) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.

### **Commencement of Tidal Works**

4. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority so that river traffic, the flow or regime of the river and the exercise of the Statutory Conservancy and Navigation Authority's functions do not suffer more interference than is reasonably practicable, and an authorised officer of the Statutory Conservancy and Navigation Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

### **Discharges, etc.**

5.—(1) The undertaker must not without the Consent of the Statutory Conservancy and Navigation Authority —

- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or
- (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Statutory Conservancy and Navigation Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Statutory Conservancy and Navigation Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 24 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

(5) The undertaker must not, in exercise of the powers conferred by article 24 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Statutory Conservancy and Navigation Authority.

### **Obstruction in river**

6. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Statutory Conservancy and Navigation Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

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

### **Removal etc. of the Statutory Conservancy and Navigation Authority 's moorings and buoys**

7. If—

- (a) by reason of the construction of any tidal work it is reasonably necessary for the Statutory Conservancy and Navigation Authority to incur reasonable 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 the Statutory Conservancy and Navigation Authority, or laying down and removing substituted 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) the Statutory Conservancy and Navigation Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Statutory Conservancy and Navigation Authority .

### **Navigational lights, buoys, etc.**

8. In addition to any Requirement imposed under this Order the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the River Humber), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Statutory Conservancy and Navigation Authority may from time to time reasonably require.

### **Removal of temporary works**

9. On completion of the construction of any part of a permanent authorised work, the undertaker must as soon as practicable remove—

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

and must make good the site to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority.

### **Protective action**

10.—(1) If any tidal work—



- (a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a tidal work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
  - (i) this Part of this Schedule; or
  - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the river.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Statutory Conservancy and Navigation Authority may in writing require the undertaker to—

- (a) remove, alter or pull down the tidal work, and where the tidal work is removed to restore the site of that work (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to its former condition; or
- (b) take such other action as the Statutory Conservancy and Navigation Authority may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a tidal work gives rise to environmental impacts over and above those anticipated by any environmental document, the undertaker, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(1), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Statutory Conservancy and Navigation Authority.

(5) If the Statutory Conservancy and Navigation Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Statutory Conservancy and Navigation Authority must notify the undertaker of that environmental impact, the reasons why the Statutory Conservancy and Navigation Authority believes that the environmental impact is being caused by the tidal work and of measures that the Statutory Conservancy and Navigation Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Statutory Conservancy and Navigation Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Statutory Conservancy and Navigation Authority as to why it has implemented such other measures.

### **Abandoned or decayed works**

**11.**—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or

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(1) 1964 c.40.

- (b) if the undertaker so elects, to remove the tidal work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Statutory Conservancy and Navigation Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

### **Facilities for navigation**

**12.**—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Statutory Conservancy and Navigation Authority and must ensure that access to such aids remains available during and following construction of any tidal works.

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

(3) The undertaker must comply with the directions of the Statutory Conservancy and Navigation Authority from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

### **Sedimentation, etc.: remedial action**

**13.**—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

- (a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and
- (b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Statutory Conservancy and Navigation Authority be removed or made good.

(2) The undertaker must either—

- (a) pay to the Statutory Conservancy and Navigation Authority any additional expense to which the Statutory Conservancy and Navigation Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or
- (b) carry out the necessary dredging at its own expense and subject to the prior approval of the Statutory Conservancy and Navigation Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Statutory Conservancy and Navigation Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

### **Indemnity**

**14.**—(1) The undertaker is responsible for and must make good to the Statutory Conservancy and Navigation Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Authority by reason of—

- (a) the construction or operation of the authorised works or the failure of the authorised works;
- (b) anything done in relation to a mooring or buoy under paragraph 8; or

- (c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the undertaker must indemnify the Statutory Conservancy and Navigation Authority 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 the Statutory Conservancy and Navigation Authority on behalf of the undertaker; or
- (b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Statutory Conservancy and Navigation Authority, or in a manner approved by the Statutory Conservancy and Navigation Authority, 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 the Statutory Conservancy and Navigation Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Statutory Conservancy and Navigation Authority must give the undertaker 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 is to be made without the prior consent of the undertaker.

### **Statutory functions**

**15.**—(1) Subject to article 3 (disapplication and modification of legislative provisions) and this paragraph, any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

- (a) any enactment relating to the Statutory Conservancy and Navigation Authority;
- (b) any byelaw, direction or other requirement made by the Statutory Conservancy and Navigation Authority under any enactment; and
- (c) any other exercise by the Statutory Conservancy and Navigation Authority of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 4 (incorporation of the Act of 1847) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dock master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 4 (incorporation of the 1847 Act), if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Statutory Conservancy and Navigation Authority must consult the undertaker before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the authorised development.

(5) The Statutory Conservancy and Navigation Authority must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

### **Operating procedures**

**16.**—(1) Before commencing marine commercial operations the undertaker must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development.

(2) The undertaker must not submit the statement referred to in sub-paragraph (1) unless it has first consulted with the harbour master, the dockmaster for the Port of Immingham and the IOT Operators, as defined in Part 4 of this Schedule, and has had due regard to their representations.

(3) Prior to granting or refusing approval of the statement referred to in sub-paragraph (1), the SCNA may carry out its own navigational risk assessment and may impose reasonable conditions on the approval for the purposes set out in paragraph 3(2)(a) to (c) of this Part of this Schedule.

(3) The undertaker ~~and~~ must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time.

### **Removal of wrecks and obstructions, etc. Oil Spillage Plan**

~~16.17.~~ The undertaker must consult the Statutory Conservancy and Navigation Authority before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Statutory Conservancy and Navigation Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

### **Disputes**

~~17. Any dispute arising between the undertaker and the Statutory Conservancy and Navigation Authority under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).~~