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STATUTORY INSTRUMENTS

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1975 No. 2206

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Oulton Broad Revision Order 1975**

<i>Made</i> - - - -	14th August 1975
<i>Laid before Parliament</i>	6th November 1975
<i>Coming into Operation</i>	17th December 1975

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[DOE 20586]

## SCHEDULES

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The Secretary of State for the Environment, in exercise of the powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf and on the application of the Waveney District Council and the Great Yarmouth Port and Haven Commissioners, hereby makes the following Order:—

### PART I

#### PRELIMINARY

##### *Citation and commencement*

1.—(1) This Order may be cited as the Oulton Broad Revision Order 1975, and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c).

(2) The Lowestoft (Oulton Broad) Order 1922(d) and so much of this Order as relates to the Council may be cited together as the Oulton Broad Orders 1922 and 1975.

(3) The Great Yarmouth Port and Haven Acts and Orders 1866 to 1963(e), the Great Yarmouth Port and Haven (Byelaws) Order 1973(f), the Great Yarmouth Port and Haven (Revision of Charges) Order 1973(g) and so much of this Order as relates to the Commissioners may be cited together as the Great Yarmouth Port and Haven Acts and Orders 1866 to 1975.

##### *Division of Order into Parts*

2. This Order is divided into Parts as follows:—

Part I —Preliminary

Part II —Transfer of Undertaking to Council

Part III—Jurisdiction and Powers

Part IV—Miscellaneous

##### *Interpretation*

3.—(1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively that is to say:—

“the appointed day” means the first day of the month next following the month current at the coming into operation of this Order;

“the Board” means the British Transport Docks Board;

“the Broad” has the meaning assigned to it by section 3 of the Order of 1922;

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(a) 1964 c. 40.

(b) S.I. 1970/1681 (1970 III, p. 5551).

(c) 9 & 10 Geo. 6, c. 18; 1965 c. 43.

(d) 1922 c. 1.

(e) 1866 c. ccxlvii; 1900 c. ciii; 1907 c. xlii; 1911 c. xcix; 1922 c. 1; 1924 c. lxxxii; 1925 c. liii; 1948 c. xlvi; 1950 c. xxxiv; 1951 c. xxvii; 1956 c. lxxi; 1962 c. xxxvii; 1963 c. xxvi.

(f) S.I. 1973/1465.

(g) S.I. 1973/1486.

“the Commissioners” means the Great Yarmouth Port and Haven Commissioners;

“the Committee” means the Oulton Broad Joint Committee constituted under the Order of 1922;

“the Council” means the Waveney District Council;

“enactment” includes an enactment in any general or local Act, and any order, byelaw, rule, regulation, scheme or other instrument made under any Act for the time being in force;

“functions” includes powers, duties and obligations;

“the general rate fund” means the general rate fund of the Waveney District;

“the Order of 1922” means the Lowestoft (Oulton Broad) Order 1922;

“the undertaking” means the undertaking of the Council in connection with the Broad and in the event of the Council and the Board entering into arrangements under article 13 (Arrangements in respect of the lock between Lake Lothing and the Broad) of this Order in respect of the lock connecting Lake Lothing to the Broad, includes that lock.

(2) For the purpose of this Order and sections 4 and 6 of the Great Yarmouth Port and Haven Act 1866 “Oulton Dyke” means the waters known as Oulton Dyke lying to the west of an imaginary straight line drawn between ordnance survey National Grid reference points TM650835E; 292628N and TM650850E; 292580N.

(3) The Interpretation Act 1889(a) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(4) Unless the context otherwise requires a reference in this Order to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment including this Order.

## PART II

### TRANSFER OF UNDERTAKING TO COUNCIL

#### *Establishment of Council as harbour authority in lieu of Committee*

4. As from the appointed day the Council, subject to the provisions of article 9 (Application of enactments) and article 10 (Alteration of limits) of and Schedule 1 to this Order, are hereby designated, in lieu of the Committee, the authority for the purpose of exercising the functions conferred or imposed on the Committee by the Order of 1922 or any other enactment and accordingly on the appointed day—

- (1) the Committee shall be and are hereby dissolved;
- (2) there shall be transferred to and vested in the Council by virtue of this Order the undertaking of the Committee including—
  - (a) all that property vested in the Committee which immediately before the appointed day was held by them for the purposes of their undertaking; and
  - (b) all rights, liabilities and functions of the Committee subsisting immediately before the appointed day for the purpose of their undertaking other than rights and obligations under an agreement for the rendering of personal services.

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(a) 1889 c. 63.

### *Accounts of Committee*

5.—(1) The accounts of the Committee and of their officers shall be made up to the appointed day and shall be audited in like manner and subject to the like incidents and consequences as if this Order had not been made.

(2) Any sums certified by a district auditor to be due from any person at such date shall be paid to the Council.

### *Saving of contracts*

6. As from the appointed day all agreements, conveyances, contracts, deeds and other instruments entered into by, or made with, the Committee and in force at that date shall be read and construed and be as binding and of as full force and effect in every respect against or in favour of the Council and may be enforced as fully and effectually as if instead of the Committee the Council had been a party thereto or bound thereby or entitled to the benefit thereof.

### *Saving of pending actions*

7. Any action, arbitration or proceeding or any cause of action, arbitration or proceeding pending or existing on the appointed day by or against or in favour of the Committee shall not abate or be discontinued or be in anywise prejudicially affected by reason of the transfer to the Council of the undertaking of the Committee or of anything in this Order but may be continued, prosecuted and enforced by or against or in favour of the Council as and when it might have been continued, prosecuted and enforced by or against or in favour of the Committee if this Order had not been made but not further or otherwise.

### *Books to remain evidence*

8. All books and documents which, if this Order had not been made, would have been evidence in respect of any matter for or against the Committee shall, as from the appointed day, be admissible in evidence in respect of that matter for or against the Council.

### *Application of enactments*

9.—(1) As from the appointed day the Order of 1922 shall, with any necessary modifications, apply in relation to the Council and shall have effect as if for references to the Committee there were substituted references to the Council.

(2) Schedule 1 to this Order shall have effect with respect to the application of byelaws made by the Committee and the Commissioners and in force immediately before the appointed day.

## PART III

### JURISDICTION AND POWERS

#### *Alteration of limits*

10. The limits within which the Commissioners shall have authority and within which their powers may be exercised shall on the appointed day include Oulton Dyke and Oulton Dyke shall be within the limits described in section 4 of the Great Yarmouth Port and Haven Act 1866 and accordingly—

(1) the said section 4 shall have effect as if the words "Oulton Dyke or" were omitted in both places where those words occur;

- (2) section 6 of the said Act of 1866 shall have effect as if in the definition of the expression "the River Waveney" after the words "Branches and embayments thereof" there were inserted the words "including Oulton Dyke" and as if the words "Oulton Dyke or" were omitted in both places where those words occur;
- (3) section 3 of the Order of 1922 shall have effect as if in the definition of "the Broad" for the words "the Free Quay and Oulton Dyke" there were substituted the words "and the Free Quay".

#### *Power to dredge and sell materials*

11.—(1) Notwithstanding any of the provisions of section 6 of the Order of 1922 but subject to the provisions of section 31 of the Order of 1922 the Council, for the purpose of securing a sufficient waterway for vessels using the Broad or otherwise for the purposes of the Order of 1922 may—

- (a) deepen, dredge, scour, cleanse, excavate, alter and improve the bed of the Broad or any portion thereof; and
- (b) sell or otherwise dispose of or remove or deposit all sand, mud and other materials dredged up or removed as they think fit:

Provided that

- (i) no such material shall be laid down or deposited in any place below the level of mean high water springs except in such position as the Secretary of State for Trade may approve and subject to such conditions or restrictions as he may impose;
- (ii) no such materials shall be laid down or deposited in any place or manner so as to cover any subaqueous cable belonging to or used by the Post Office or to impede in any way the inspection, maintenance, removal or renewal of any such cable;
- (iii) as early as possible, and in any event not less than twenty-eight days, before any exercise of their powers under this article within a distance of fifty metres of any subaqueous cable belonging to or used by the Post Office, the Council shall give notice in writing to the Post Office of such intended exercise.

(2) All money arising from any sale or other disposition of sand, mud and other materials under this article after payment of the expenses connected therewith shall be applied in the same manner as the revenue from the undertaking is to be applied.

(3) The Commissioners may pay or reimburse to the Council the whole or any part of the cost of exercising the powers of paragraph (1) of this article.

(4) Nothing in provisos (ii) or (iii) to paragraph (1) of this article shall have effect in relation to any subaqueous cable unless it can be shown that the Council knew or ought reasonably to have known of the presence and position of such cable.

#### *Agency arrangements between Council and Commissioners*

12.—(1) The Commissioners may enter into and carry into effect arrangements with the Council for the discharge by the Commissioners, as agents of the Council, of any of the functions of the Council under the Order of 1922 or under this Order.

(2) Any arrangements made by the Council and the Commissioners under this article may contain such incidental, supplementary and consequential matters (including matters of a financial nature) as the Council and the Commissioners think desirable.

## PART IV

### MISCELLANEOUS

#### *Arrangements in respect of the lock between Lake Lothing and the Broad*

13.—(1) The Council may enter into and carry into effect arrangements for the operation and maintenance by the Council as agents of the Board of the lock connecting the Broad to Lake Lothing authorised by the Act 7 & 8 Geo. 4 cap. xlii intituled “An Act for making and maintaining a navigable communication for ships and other vessels between the City of Norwich, and the sea at or near Lowestoft, in the county of Suffolk.”.

(2) Any arrangements under this article may contain such incidental, supplementary and consequential provisions (including provisions of a financial nature) as appear to the Board and the Council necessary or desirable.

#### *Amendment of sections 18 and 25 of Order of 1922*

14.—(1) Section 18 of the Order of 1922 shall have effect as if after the words “or using” there were inserted the words “or moored in” and references in any subsequent enactment to “navigating or using” the Broad or Oulton Dyke shall be construed accordingly.

(2) Subsection (2) of section 25 of the Order of 1922 shall have effect as if for the words “forty shillings” there were substituted the words “fifty pounds”.

#### *Repeal*

15. On the appointed day the provisions of the Order of 1922 specified in column (1) of Schedule 2 to this Order shall be and are hereby repealed to the extent mentioned in column (2) of that Schedule.

#### *Costs of Order*

16. All costs, charges and expenses of, or in connection with the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay by the Secretary of State or a joint committee of both Houses of Parliament or any costs, charges and expenses incurred in opposing the Order) shall be paid by the Council.

Signed by authority of  
the Secretary of State  
14th August 1975.

*John Gilbert,*  
Minister for Transport,  
Department of the Environment.

## SCHEDULES

### Article 9

### SCHEDULE 1

#### APPLICATION OF BYELAWS

1. The byelaws made by the Committee under section 25 of the Order of 1922 or section 83 of the Harbours, Docks and Piers Clauses Act 1847<sup>(a)</sup> and in force immediately before the appointed day shall continue in force in relation to the Broad unless revoked by the Council and shall have effect as if for references to the Committee there were substituted references to the Council.

2.—(1) The byelaws made by the Committee under paragraph (e) of subsection (1) of section 25 of the Order of 1922 in relation to the speed of vessels and in force immediately before the appointed day shall continue to apply to Oulton Dyke unless revoked by the Commissioners and shall have effect in relation to Oulton Dyke as if for references to the Committee there were substituted references to the Commissioners.

(2) For the purpose of continuing in force in relation to Oulton Dyke the byelaws referred to in sub-paragraph (1) of this paragraph, section 25 of the Order of 1922 shall with any necessary modifications apply in relation to the Commissioners and shall have effect as if for references to the Committee and the Broad there were substituted references to the Commissioners and Oulton Dyke respectively and as if there were omitted from subsection (1) of the said section 25 the words from the commencement of the said subsection (1) to the words "Limits" and paragraphs (a), (b), (c) and (d).

3. The Rivers Yare, Bure and Waveney Bye-laws 1930, the Rivers Yare, Bure and Waveney Bye-laws 1936 and the Great Yarmouth Port and Haven River Bye-laws 1946 made by the Commissioners and in force immediately before the appointed day shall as from that day extend and apply to Oulton Dyke as if references therein to the River Waveney included a reference to the said Dyke.

### Article 15

### SCHEDULE 2

#### PROVISIONS OF THE ORDER OF 1922 REPEALED

(1) Enactment	(2) Extent of Repeal
Section 4 (Undertakers) . . . . .	The words "hereinafter constituted".
Section 5 (Commissioners Clauses Act 1847)	The whole section.
Section 8 (Committee) . . . . .	The whole section.
Section 9 (Appointment of Committee) . .	The whole section.
Section 10 (Appointment by more than one body) . . . . .	The whole section.
Section 11 (Period of office) . . . . .	The whole section.
Section 12 (Casual vacancy) . . . . .	The whole section.
Section 21 (Revenue) . . . . .	The whole section.
Section 22 (Clerk and Treasurer) . . . .	The whole section.
Section 23 (Auditor) . . . . .	The whole section.
Section 24 (Annual account to be sent to Ministry of Transport) . . . . .	The whole section.
Section 27 (Appointment of officers to enforce byelaws and regulations) . . . . .	The whole section.

(a) 1847 c. 27.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order provides for the establishment of the Waveney District Council as the authority for the purpose of exercising the functions, powers and duties of the Oulton Broad Joint Committee constituted by the Lowestoft (Oulton Broad) Order 1922 and it provides for the dissolution of that Committee and the transfer of their undertaking to the District Council.

The Order also extends the jurisdiction of the Great Yarmouth Port and Haven Commissioners so as to include Oulton Dyke and correspondingly provides for the exclusion of Oulton Dyke from the operation of the Lowestoft (Oulton Broad) Order 1922.

The Order empowers the District Council to carry out dredging operations in Oulton Broad and empowers the Commissioners to reimburse to the Council the cost of such operations. It also empowers the Commissioners to enter into arrangements with the District Council for the discharge by the Commissioners as Agents of the Council of functions of the Council in connection with Oulton Broad.

The Order empowers the Council to enter into arrangements for the operation and maintenance by the Council as agents for the British Transport Docks Board of the lock between Lake Lothing and Oulton Broad and amends and repeals certain provisions of the Lowestoft (Oulton Broad) Order 1922 and the Great Yarmouth Port and Haven Act 1866.



*Amendment of Act of 1948*

4. All the provisions of the existing Acts and Orders shall be construed and take effect in all respects as if the definition of "vessel" contained in section 2 (Interpretation) of the Act of 1948 were deleted and were replaced by the following definition namely:—

“‘vessel’ includes any vessel, ship, lighter, keel, barge, boat, raft, pontoon and craft of any kind, however navigated, propelled or moved, and any hovercraft and any hydrofoil vessel and any seaplane on the surface of the water and for the purpose of this present definition (i) a ‘hovercraft’ means a hovercraft within the meaning of the Hovercraft Act 1968 and (ii) a ‘hydrofoil vessel’ means a vessel however propelled designed to be supported on foils.”.

*Remuneration of Commissioners*

5. The Commissioners may pay to individual Commissioners such salary, fee, allowances and expenses as the Commissioners may determine.

*Amendment of Act of 1951*

6. Section 7 (General qualification of Commissioners) of the Act of 1951 shall have effect as if the word "male" were omitted in both places where it occurs therein.

*Byelaws*

7.—(1) Section 236 of the Local Government Act 1972(a) in its application to byelaws made by the Commissioners after the coming into operation of this Order shall have effect as if in subsection (7) after the word "confirm" where it first occurs in the subsection the words "with or without modification" were inserted:

Provided that, if so directed by the confirming authority, the Commissioners shall cause notice of any proposed modification to be given in accordance with such directions before any byelaw is confirmed with modification.

(2) Section 12 (Byelaws) of the Act of 1963 shall have effect as if for the words "twenty pounds" in both places where these words occur there were substituted the words "fifty pounds" and as if for the words "two pounds" there were substituted the words "five pounds".

*John Gilbert,*  
Minister for Transport,  
Department of the Environment.

Signed by authority of  
the Secretary of State  
18th August 1975.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

Section 33 of the Harbours, Docks and Piers Clauses Act 1847 (which is made applicable to Great Yarmouth Port and Haven by certain provisions of the existing Acts and Orders of the Great Yarmouth Port and Haven Commissioners) provides that upon payment of the rates therein mentioned and subject as therein provided a harbour to which the section applies shall be open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers.

This Order enables the Great Yarmouth Port and Haven Commissioners, notwithstanding section 33 of the Act of 1847, to appropriate lands, works, etc. for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels or goods.

The definition of the term "vessel" in the Commissioners' existing Acts and Orders is enlarged to include hovercraft and hydrofoil vessels.

The Order also enables the Commissioners to remunerate individual Commissioners and to appoint female Commissioners, enables the Secretary of State to make modifications to byelaws on confirmation and increases penalties for breach of byelaws.