
STATUTORY INSTRUMENTS

1989 No. 1545

HARBOURS, DOCKS, PIERS AND FERRIES

**The Harwich Dock Company Harbour Empowerment
Order 1988**

Made - - - - - 27th June 1988

Laid before Parliament 19th October 1988

Coming into force - 1st September 1989

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Whereas objections to this Order have been made and not withdrawn and the Secretary of State for Transport is required, in accordance with the procedure prescribed in paragraph 4A of Schedule 3 to the Harbours Act 1964(a), to give notice of the making of this Order and its effect to each person opposing the Order;

And whereas this Order shall come into force 28 days after the giving of such notice unless any such person gives notice to the Secretary of State that he maintains his opposition to the Order, and his opposition is not withdrawn before that date, in which case it shall come into force at such time as prescribed in the Statutory Orders (Special Procedure) Act 1945(b);

Now therefore, the Secretary of State in exercise of the powers conferred by section 16 of the Harbours Act 1964 and now vested in him(c) and of all other powers enabling him in that behalf, and on the application of the Harwich Dock Company Limited, hereby makes the following Order:

PART I

PRELIMINARY

Citation

1. This Order may be cited as the Harwich Dock Company Harbour Empowerment Order 1988.

Interpretation

- 2.—(1) In this Order, except where the context otherwise requires—

(a) 1964 c.40; section 16 and Schedule 3 were amended by the Transport Act 1981 (c.56) Schedule 6 paragraphs 4(1) to (8) and 14(2) and (3).

(b) 1945 c.18, as amended by the Statutory Orders (Special Procedure) Act 1965 c.43.

(c) See S.I. 1981/238.

“the Board” means the Harwich Harbour Board;

“the Company” means the Harwich Dock Company Limited;

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate signed by the Chief Executive of the Board and an Assistant Secretary in the Department of Transport and marked “Plan and sections referred to in the Harwich Dock Company Harbour Empowerment Order 1988” of which copies are deposited at the offices of the Secretary of State for Transport, the offices of the Board and the registered office of the Company;

“the dock undertaking” means the undertaking of the Company at the harbour as authorised by this Order;

“the harbour” means Harwich harbour;

“the Harbour Master” has the same meaning as in the Harwich Harbour Act 1974(a);

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plan;

“subsidiary” has the meaning given by section 736 of the Companies Act 1985(b);

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“vessel” means a ship, boat or raft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968(c) or any other amphibious vehicle or a seaplane;

“the works” means the works authorised by article 5 of this Order, and any works constructed under article 7 of this Order for or in connection with or subsidiary to either of those works and includes those works as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid under paragraph (2) of the said article 5.

(2) References in this Order to reference points shall be construed as references to National Grid reference points.

(3) Any reference in this Order to a distance or length in any description of works, powers or land shall be construed as if the words “or thereabouts” were inserted after that reference.

Incorporation of Harbours, Docks, and Piers Clauses Act 1847

3.—(1) The Harbours, Docks, and Piers Clauses Act 1847(d) (except sections 6 to 19, 24, 25, 31, the proviso to section 32, sections 42, 48 to 50, 77 and 78), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the following modifications, that is to say—

- (a) section 23 shall be read and have effect as if the words “provided that no such lease be granted for a longer term than three years” were omitted;
- (b) section 63 shall be read and have effect as if for the words from “liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £100;
- (c) section 69 shall be read and have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding £400;
- (d) section 85 shall be read and have effect as if the words “in the prescribed manner” to the end of the subsection were deleted and there were substituted therefor the words “by the Secretary of State” and the provisions of sections 236 (3) to (8) and (11) and 238 of the Local Government Act 1972(e) shall apply to

(a) 1974 c.i.
(b) 1985 c.6.
(c) 1968 c.59.
(d) 1847 c.27.
(e) 1972 c.70.

any byelaws made by the Company and the said section 238 shall be construed and have effect as if the expression "proper officer" were intended to refer to the secretary of the Company and, in its application to the said section 85, subsection (7) of section 236 of the said Act of 1972 shall have effect as if, after the words "the confirming authority may confirm" there were inserted the words "with or without modifications" and, as if at the end of that subsection, there were added the following proviso—

"Provided that where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Company and by any other persons who have, or are likely to have, been informed of it."

(2) In construing the provisions so applied the expression "the special Act" means this Order.

PART II

LIMITS OF JURISDICTION

Limits of jurisdiction

4.—(1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of their Dockmaster shall be exercised shall comprise the docks, quays, land and premises at any time belonging to, or vested in, the Company or used, intended to be used or set aside for the purposes of the harbour undertaking together with so much of the harbour as lies within the area of water adjacent to those docks, quays, land and premises and which is bounded by an imaginary line parallel to and 50 metres riverward from the northern face and 2 metres riverward from the eastern and southern faces of the quays (Works Nos 1 and 2) when constructed in pursuance of the powers conferred by this Order.

(2) In case of conflict between any directions lawfully given by the Harbour Master and any directions given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

PART III

WORKS

Power to construct works

5.—(1) Subject to the provisions of this Order, the Company may, in the lines or situations and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described, in the district of Tendring, with all necessary works and conveniences connected therewith—

Work No. 1—(a) A quay, being partly of solid construction with reinforced concrete and infill material and partly of open construction with bearing piles and a reinforced concrete platform, commencing at the western extremity of the existing berth number 2/3 proceeding thence in a northerly direction for a distance of 21 metres to reference point TM 2600732957, thence in an east-north-easterly direction for a distance of 66 metres to reference point TM 2606732984, thence continuing in an east-north-easterly direction for a distance of 177 metres to

reference point TM 2623733034 thence in a south-south-easterly direction for a distance of 66 metres to the face of existing berth number 5 and thence following the face of that berth westwards and subsequently of existing berths numbers 4 and 2/3 respectively to the point of commencement and together with all necessary excavation of the bed of the harbour.

(b) An open face quay being of open construction with bearing piles and a reinforced concrete platform commencing at the extreme north-east corner of Work No. 1(a) at reference point TM 2623733034 proceeding thence in an east-north-east by easterly direction for a distance of 214 metres to reference point TM 2645033053 thence in a south-south-easterly direction for a distance of 25 metres to reference point TM 2646133030 thence continuing in a west-south-westerly direction to the eastern extremity of existing berth number 5 and thence following that berth to abut and join the extreme south-east extremity of Work No. 1(a) and thence in a north-north-westerly direction to the point of commencement and together with all necessary excavation of the bed of the harbour.

Work No. 2—A quay of open construction with bearing piles and a reinforced concrete platform commencing at the extreme south-east corner of the Navyard and proceeding in an east-north-easterly direction for a distance of 202 metres to reference point 2648532975, thence proceeding in a north-north-westerly direction for a distance of 62 metres to abut and join the extreme south-east corner of Work No. 1(b) thence in a west-south-westerly direction for a distance of 202 metres and thence in south-south-easterly direction to the point of commencement.

(2) The Company may within the limits of deviation reconstruct, renew, alter, extend, enlarge, add to, replace or relay the works and may maintain the same as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid.

(3) The Company may, by means of the works authorised by paragraph (1) above, enclose and reclaim so much of the bed of the harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the dock undertaking.

(4) The start of Construction of Works Nos. 1 and 2 shall not take place until authorisation has been given by the highway authority for the financing of the construction of Stage 2 of the Dovercourt Bypass.

Power to deviate

6. In the construction of the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

Subsidiary works

7. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the works.

Period for completion of works

8. If the works are not completed within ten years from the date mentioned in article 5(4) above or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as shall then be completed.

Works to form part of dock undertaking

9. The works shall for all purposes form part of the dock undertaking.

Works to be within county of Essex, etc.

10.—(1) So much of the works as are beyond mean low water shall be deemed to be within—

- (a) the county of Essex;
- (b) the district of Tendring;
- (c) the petty sessional division of Harwich;
- (d) the Harwich electoral division; and
- (e) the East Ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(a) until the Company have certified in writing to the Director General of Ordnance Survey that the works have been completed.

Tidal works subject to licensing by Board

11.—(1) Notwithstanding paragraph (i) in the proviso to section 19(1) of the Harwich Harbour Act 1974, but subject to paragraph (2) below, the Company shall not construct any of the works below the level of high water unless they are licensed to do so by a works licence granted by the Board under section 20 of that Act and except in accordance with any conditions subject to which the licence is granted and in accordance with plans, sections and particulars approved under that section.

(2) If there shall be any inconsistency between the plans approved under section 20 of the Harwich Harbour Act 1974 and the plans approved by the Secretary of State under article 15 of this Order, the works shall be constructed in accordance with the plans approved by the Secretary of State.

Other works subject to licensing by Board

12.—(1) This article applies to any additional permanent structure exceeding a height of 4 metres above deck level and which in this article is hereafter referred to as a “new structure”.

(2) The provisions of section 20 of the Harwich Harbour Act 1974 shall apply (with the necessary modifications) to a new structure and, accordingly, the Company shall not place or permit to be placed on any of their quays any new structure unless they are licensed to do so by the Board under and in accordance with that section as so modified.

(3) When deciding whether or not to grant a licence in accordance with this article the Board shall take account of any detrimental effect to the safety of navigation which may be caused by loss of visual or radar surveillance of the harbour arising from the new structure which is the subject of an application for the licence in question.

(4) The Company shall be entitled to appeal to the Secretary of State on the grounds specified and in accordance with section 23 of the Harwich Harbour Act 1974.

Power to dredge

13. Subject to article 26 of this Order, and sections 19 and 21 of the Harwich Harbour Act 1974, the Company may, for the purposes of constructing and maintaining the works or otherwise for the purposes of the dock undertaking from time to time deepen, dredge, scour, cleanse, alter and improve so much of the harbour and foreshore as lies within their limits of jurisdiction and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894(b)) from time to time dredged by them—

Provided that no materials so dredged, other than those dredged for the purpose of constructing the works or filling in and reclaiming from the harbour and foreshore so

(a) 1841 c.30.

(b) 1894 c.60.

much of the harbour and foreshore as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Obstruction of works

14. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall for every such offence be liable on summary conviction to a fine not exceeding £400.

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

15.—(1) A tidal work shall not be constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid in contravention of this article or of any condition or restriction imposed under this article—

(a) the Secretary of State may by notice in writing require the Company 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 Company 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 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 Company.

(3) The Company shall not apply to the Secretary of State for approval for any work for which a licence from the Board is required under section 20 of the Harwich Harbour Act 1974 as applied by article 11 or article 12 of this Order until they have applied to the Board for a works licence and the Board have notified them of their decision or, where there is an appeal under section 23 of that Act in respect of any decision given, or deemed to have been given, by the Board upon that application, the appeal has been dealt with.

Lights on tidal works during construction

16.—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, extension, enlargement, alteration, replacement or relaying thereof or addition thereto, 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 or the Board, or as, failing agreement between them, the Secretary of State shall from time to time direct.

(2) If the Company fail to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

Provision against danger to navigation

17.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the Company shall forthwith notify Trinity House and the Board and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Board shall from time to time direct.

(2) If the Company fail to notify the Board as required by this article or to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

18.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company 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 a 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 article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, 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 Company.

(4) Nothing in this article shall prejudice or affect the powers of the Board under section 18 of the Harwich Harbour Act 1974.

Survey of tidal works

19. 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 the work and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Company.

Permanent lights on tidal works

20.—(1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Board may from time to time direct.

(2) If the Company fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

PART IV

MISCELLANEOUS AND GENERAL

Power to mortgage dock undertaking

21. The Company may mortgage, charge or otherwise encumber the dock undertaking or any part thereof.

Subsidiaries

22. The Company may enter into arrangements with any of their subsidiaries for the transfer to that subsidiary from the Company or any of their other subsidiaries in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Company, or, as the case may be, that other subsidiary, relating to the dock undertaking—

Provided that, in the case of a transfer of the whole or any part of the dock undertaking, the transferees shall be subject to all the restrictions, liabilities and obligations in respect of the dock undertaking or that part (as the case may be) to which the Company or other transferors are subject and shall perform all the duties of the

Company or those transferors under this Order in respect of the dock undertaking or that part.

Power to make charges

23.—(1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them or their subsidiaries.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

As to use of dock undertaking

24. The Company may appropriate and set apart any part of the dock undertaking for the exclusive use of any particular vessel or class of vessel.

Power to remove goods

25. If any goods are left on or in any part of the dock undertaking the Company may require the owner of the goods to remove them, and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store, and such removal shall be carried out at the expense and risk of the owner—

Provided always that—

- (a) notwithstanding such removal on behalf of the Company, the goods shall be liable to a general lien for the cost of removal, and for any charges payable to the Company by the owner; and
- (b) the power of the Company for preventing the removal of the goods until the cost of removal and the charges have been paid shall extend and apply to any goods removed or placed in store under this article.

Crown rights

26.—(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 herein contained shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

- (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 paragraph (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

Saving for Trinity House

27. None of the provisions of this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

For further protection of harbour authorities, etc.

28.—(1) In this article—

“the protected area” means in relation to the Board, and Sealink Harbours Limited, Harwich Harbour and in relation to Trinity House, the area bounded by the following co-ordinates—

Latitude 51° 56'.780N., Longitude 01° 17'.125E.

Latitude 51° 56'.865N., Longitude 01° 17'.110E.
Latitude 51° 56'.873N., Longitude 01° 17'.185E.
Latitude 51° 56'.815N., Longitude 01° 17'.195E.;

“the protected interests” means the Board, Sealink Harbours Limited or Trinity House, or any of them;

“the specified works” means any of the authorised works which are tidal works, and includes any operations carried out under the powers of article 13 of this Order in execution of the powers of article 5 of this Order.

(2) If, during the construction of the specified works on the foreshore or bed of the river, or of any temporary structures in connection therewith, or within five years after the completion of the specified works or the removal of such temporary structures, there shall be caused or created any accumulation of silt or other material, or any scouring or alteration of the tidal flow in the river, within the protected area in consequence of—

- (a) the construction of the specified works or such temporary structures; or
- (b) dredging carried out in connection with the construction of, or to afford access for vessels to, the specified works;

which shall cause either damage to the harbour works of the protected interests or an impediment to the free navigation of the protected area or shall prejudice safe navigation or berthing in that area, the Company, if so requested by the protected interests within the period of five years after such completion, shall remove such accumulation of silt or other material or, as the case may be, repair such damage or otherwise carry out such works or take such action as they may consider necessary for the removal of the impediment or the restoration of safe navigation and berthing, and, if they fail to do so, the protected interests may themselves cause the work to be done and may recover from the Company the reasonable cost incurred by them in doing so.

(3) If any such accumulation, scouring or alteration of the tidal flow arises within the said period of five years and is removed or remedied in accordance with paragraph (2) above, then any recurrence of such accumulation, scouring or alteration of the tidal flow shall from time to time be removed or otherwise remedied as aforesaid during a period of 10 years after the completion of the specified works or the removal of such temporary structures, as the case may be.

(4) The Company shall repay or, as the case may be, keep the protected interests indemnified against all damages, losses, costs and expenses which they may directly or indirectly sustain, or be liable for, or reasonably and properly incur, by reason or in consequence of any injury or damage which may be caused or may result to any harbour works or property of the protected interests, or as a result of any interference in the operation thereof, by or in consequence of any such accumulation, scouring or alteration of the tidal flow—

Provided that the protected interests shall give to the Company notice of any claim or demand made against them which, in the opinion of the protected interests, is a claim or demand for which the Company may be liable under this paragraph, and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.

(5) Any difference arising between the Company and the protected interests under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the president of the Institution of Civil Engineers.

Saving for Harwich Harbour Board

29.—(1) None of the provisions of this Order shall prejudice or affect any of the rights, powers or privileges of the Board.

(2) If in connection with the works the Board relocate the Guard Buoy any expenditure reasonably incurred by the Board in so doing shall be recoverable from the Company.

(3) Without prejudice to article 28 of this Order, as having effect for the protection of the Board, if in consequence of the construction of the works, or any of them, the Board

find it necessary to dredge a channel for access by sea to their boat harbour, either to form a new access or to maintain the existing access or such new access, they may recover from the Company the costs reasonably incurred by them in so doing.

Signed by authority of the Secretary of State

27th June 1988

David B. Mitchell
Minister of State, Department of Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Harwich Dock Company Limited to construct and maintain new works at Harwich Harbour; and to carry out subsidiary works.

The Order also confers further powers on the Company to maintain and operate their undertaking at the harbour as a statutory harbour undertaking and defines the limits of jurisdiction of the Company.

The applicants for this Order are the Harwich Dock Company Limited.