

---

STATUTORY INSTRUMENTS

---

**1996 No. 2037**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Harwich Parkeston Quay Harbour Revision Order 1996**

*Made* - - - - - *23rd July 1996*

*Coming into force* - - - - - *6th August 1996*

Whereas Harwich International Port Limited have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport has, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment;

And whereas objections made pursuant to paragraph 3(a) of the said Schedule 3 have been withdrawn;

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (2)(b) of the said section 14:

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(4)) in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation and commencement**

1. This Order may be cited as the Harwich Parkeston Quay Harbour Revision Order 1996 and shall come into force on 6th August 1996.

**Interpretation**

2.—(1) In this Order:—

- 
- (1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.
- (2) Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988/1336), regulations 3 and 4.
- (3) OJ No. L175, 5.7.85, p. 40.
- (4) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (5) S.I. 1981/238.

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(6);

“the Act of 1983” means the Parkeston Quay Act 1983(7);

“the Company” means Harwich International Port Limited;

“deposited plans and sections” means the plans and sections prepared in triplicate, signed by an Under Secretary in the Department of Transport and marked “plans and sections referred to in the Harwich Parkeston Quay Harbour Revision Order 1996”, of which two copies have been deposited at that Department and one copy has been deposited at the offices of the Company at Parkeston Quay, Harwich, Essex CO12 4SR;

“the Harwich Parkeston Quay enactments” means the enactments specified in the Schedule to this Order and this Order;

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

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

“the river” means the river Stour;

“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;

“works” means the works authorised by this Order or, as the case may require, any part thereof.

(2) This Order shall be read as if the words “or thereabouts” were inserted after each distance mentioned in article 3 of this Order.

(3) Unless the context otherwise requires—

- (a) any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order;
- (b) map reference points specified in this Order are Ordnance Survey National Grid reference points.

### **Power to construct works**

3.—(1) Subject to the provisions of this Order the Company may in the district of Tendring and in the situations and lines and within the limits of deviation and according to the levels shown on the deposited plans and sections construct and maintain the works hereinafter described, together with all necessary and proper works and conveniences connected with or incidental thereto, that is to say:—

Work No. 1 A quay extension and linkspan approach of open construction consisting of a reinforced concrete deck on tubular steel piles with berthing and associated facilities for vessels commencing on the quay face at a point at TM 37582726 then proceeding in a northerly direction for a distance of 12.5 metres to a point at TM 37592739 then proceeding in a westerly direction for a distance of 60 metres to a point at TM 36992740 and then proceeding in a north-westerly direction for a distance of 59 metres and terminating at a point at TM 36562788.

Work No. 2 A floating pontoon steel fabrication linkspan and a jetty of open construction on tubular steel piles and steel fabrication forming a berthing and mooring line commencing by a junction with Work No. 1 at a point at TM 36562788 then proceeding in an easterly direction for a distance of 245 metres and terminating at a point at TM 39102803.

Work No. 3 A floating pontoon steel fabrication linkspan to replace existing linkspan facility commencing by a junction with Work No. 1 at a point at TM 37592739 then proceeding in an easterly direction for a distance of 60 metres and terminating at a point at TM 38192737.

---

(6) 1847 c. 27.  
(7) 1983 c.vi.

### **Period for completion of works**

4. If the works are not completed before 1st March 2006 the powers by this Order granted to the Company for constructing the works shall on that day cease except as to so much thereof as is then substantially commenced.

### **Subsidiary works**

5. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation, construct and maintain all such necessary works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works including, without prejudice to the foregoing, walkways and associated gangways.

### **Power to deviate**

6. In constructing the works the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent upwards or downwards.

### **Application of works provisions of Act of 1983**

7.—(1) The following provisions of the Act of 1983 shall, with the necessary modifications, apply to the works as they apply to the works authorised by that Act:—

Section 11 (Tidal works not to be executed without approval of Secretary of State);

Section 12 (Survey of tidal works);

Section 13 (Lights on tidal works during construction, etc.);

Section 14 (Permanent lights on tidal works);

Section 15 (Abatement of works abandoned or decayed);

Section 16 (Provision against danger to navigation);

Section 17 (Defence of due diligence).

(2) Section 29 (For protection of conservancy and navigation in Harwich Harbour) of the Act of 1983 shall apply for the purposes of this Order subject to any necessary modifications, including the substitution, for the references therein to sections 5 and 18 of the Act of 1983, of references to articles 5 and 8 of this Order.

(3) In the provisions of the Act of 1983 as applied by this article “tidal work” has the meaning given by article 2 of this Order.

### **Extent of Parkeston Quay**

8. The works shall form part of Parkeston Quay and the provisions of the Great Eastern Railway Act 1874<sup>(8)</sup> and all other provisions of the Harwich Parkeston Quay enactments shall (so far as the same are applicable and are not inconsistent with the provisions of this Order) apply as if the works had been the quay and connected works authorised by the said Act of 1874.

### **Protection of Environment Agency**

9.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the Company, have effect for the protection of the Agency.

---

(8) 1874 c.cxxviii.

(2) In this article—

“accumulation” means any accumulation of silt or other material which affects the operation of any outfall;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure or appliance constructed or used for land drainage, defence against water (including sea water) or tidal monitoring;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature, including sea defences, under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(9) or any order, regulation, byelaw or other instrument made or having effect thereunder;

“the fishery” means fish in, or migrating to or from, any river and the spawn, habitat or food of such fish;

“outfall” means—

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means any permanent or temporary work or operation authorised by this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

- (a) (3) (a) Before beginning to construct any specified work, the Company shall submit to the Agency plans of the work and such further particulars available to them as the Agency may reasonably require.
- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency or as settled in accordance with paragraph (16) below.
- (c) Any approval of the Agency required under this paragraph—
  - (i) shall not be unreasonably withheld;
  - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;
  - (iii) may be given subject to such reasonable requirements as the Agency may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

(4) Without prejudice to the generality of paragraph (3) above, the requirements which the Agency may impose under that paragraph include—

- (a) conditions as to the time at which and the manner in which any work is to be carried out;

- (b) conditions requiring the Company at their own expense—
  - (i) to provide or maintain means of access for the Agency;
  - (ii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments, outfalls and other new works and the strengthening, repair or renewal of existing banks, walls or embankments, outfalls or other works) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;
  - (iii) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur.

(5) Any specified work, and all protective works required by the Agency under paragraph (4) above, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(6) The Company shall give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

- (a) (7) (a) If, during the construction of a specified work or within 10 years after the completion of such work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion, the Company, if so required by the Agency before or within the period of 10 years after such completion shall remedy such accumulation or erosion in the manner specified in sub-paragraph (c) below and, if they refuse or fail so to do, the Agency may itself cause the work to be done and may recover the reasonable cost thereof from the Company.
- (b) Should any accumulation or erosion in consequence of such construction arise within the said period of 10 years and be remedied in accordance with sub-paragraph (c) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction.
- (c) For the purposes of sub-paragraphs (a) and (b) above—
  - (i) in the case of an accumulation, the remedy shall be its removal; and
  - (ii) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency:

Provided that in the event that surveys, inspections, tests or sampling establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(8) For the purposes of paragraphs (6) and (7)(a) above the date of completion of a work shall be the date on which it is brought into use.

- (a) (9) (a) Any specified work which provides a defence against flooding shall be maintained by and at the expense of the Company to the reasonable satisfaction of the Agency.
- (b) If any such work is no longer required by the Company or is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the

Company at the Company's own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Agency thinks proper.

- (c) If, on the expiration of 30 days from the date on which a notice is served upon the Company, they have failed to comply with the requirements of the notice, the Agency may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Company.

(10) If by reason of the construction of any specified work or by reason of the failure of that work or of the Company to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency and, if the Company fail to do so, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

(11) If any works are constructed by the Agency in relation to a drainage work the Company shall have no claim against the Agency in respect of any additional costs which may be incurred by the Company as a result of such works.

(12) The Company shall indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this article;  
(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this article.

(a) (13) (a) Without prejudice to the other provisions of this article the Company shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Agency by reason of the construction of any of the works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Company, their contractors, agents, workmen, or servants whilst engaged upon any such work.

(b) The Agency shall give to the Company reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Company which agreement shall not be unreasonably withheld.

(14) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Company from any liability under the provisions of this article.

(15) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991<sup>(10)</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>(11)</sup>, the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency.

(a) (16) (a) Unless the parties agree to arbitration any difference arising between the Company and the Agency under paragraph (3) above shall be settled by the Minister of Agriculture, Fisheries and Food on a reference to him by either party after notice in writing to the other.

(b) Subject to sub-paragraph (a) above, any difference arising between the Company and the Agency under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

---

<sup>(10)</sup> 1991 c. 59.

<sup>(11)</sup> 1975 c. 51.

### **Crown rights**

**10.**—(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 in this Order authorises the Company to take, use, enter upon or in any manner interfere with any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description—

- (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 may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Transport

23rd July 1996

*J D Henes*  
An Under Secretary in the  
Department of Transport

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Article 2(1)

## THE HARWICH PARKESTON QUAY ENACTMENTS

Chapter or Number	Title of Act or Order	Enactments
1874 c.cxxviii.	Great Eastern Railway Act 1874.	Section 2 so far as it incorporates the Act of 1847, section 4 so far as it applies to the quay and connected works and operations thereby authorised, and sections 8, 13, 64 to 68 and 81 to 84.
1904 c.cviii.	Great Eastern Railway (General Powers) Act 1904.	Section 2 so far as it incorporates the Act of 1847, section 3, section 4 so far as it applies to Work (A) thereby authorised, and sections 5 and 7 to 18.
1931 c.xcii.	London and North Eastern Railway Act 1931.	Section 2, section 3 so far as it incorporates the Act of 1847, and sections 18 to 23, 26 and 47.
1966 c.xvii.	British Railways Act 1966.	Section 2, section 4 so far as it applies to Work No. 5 thereby authorised, sections 7 to 9 and 22 to 28.
1981 c.xxxv.	British Railways (No. 2) Act 1981.	Part V.
1983 c.vi.	Parkeston Quay Act 1983.	The whole Act.
1988 c.xxviii.	Harwich Parkeston Quay Act 1988.	The whole Act.
S.I.1992/1136.	Harwich Parkeston Quay Harbour Revision Order 1992.	The whole Order.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order empowers Harwich International Port Limited to construct a new berth and associated facilities for vessels, including the replacement of an existing linkspan at Parkeston Quay.