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STATUTORY INSTRUMENTS

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**2008 No. 1261**

**The London Gateway Port Harbour Empowerment Order 2008**

**PART 5**

**FUNCTIONS OF THE HARBOUR AUTHORITY**

**Duty of the Harbour Authority**

**34.** It shall be the duty of the Harbour Authority on completion of the whole or any part of the authorised works to provide and maintain those works as a harbour and to provide such harbour services and facilities within the area of jurisdiction as it considers necessary or desirable.

**Power to make charges**

**35.—(1)** In addition to its power to demand dues under section 26 of the 1964 Act, as restricted by paragraphs (2) and (3), the Harbour Authority may demand, take and recover such charges and on such terms and conditions as it may from time to time determine, for services and facilities provided by it at London Gateway Port for the users of London Gateway Port.

(2) The power of the Harbour Authority to demand ship, passenger and goods dues under section 26(2) of the 1964 Act is restricted to the levying of ship dues on container vessels, and to the extent of and in accordance with paragraph (3).

(3) The ship dues referred to in paragraph (2) are ship dues levied on container vessels calling at London Gateway Port in respect of the Harbour Authority's costs, including costs of capital, incurred in—

- (a) dredging, deepening, scouring, cleansing, altering and improving the river bed and foreshore as authorised by article 13 (power to dredge), together with incidental costs so incurred;
- (b) the disposal of the arisings from the activities mentioned in sub-paragraph (a) by way of reclamation or otherwise for the purposes of the construction of London Gateway Port;
- (c) mitigation, compensation and monitoring required as the result of the activities mentioned in sub-paragraphs (a) and (b); and
- (d) maintenance dredging and maintenance resulting from the activities mentioned in sub-paragraphs (a) and (c), including the costs of the disposal of the arisings from those activities.

(4) Nothing in this article shall affect any power of the Harbour Authority to demand, take or recover charges (not being ship, passenger or goods dues) that it may have under or by virtue of any enactment or rule of law.

**Power to enter vessels**

**36.—(1)** A duly authorised officer of the Harbour Authority may on producing, if so required, his authority, board a vessel within the area of jurisdiction to—

- (a) ascertain the charges payable on or in respect of the vessel or goods carried in the vessel; and
  - (b) obtain any other information required for the assessment and collection of charges.
- (2) Nothing in this article applies to any vessel that is under the control of any officer of the PLA.

### **Recovery and enforcement of charges**

**37.**—(1) Section 44 (recovery of tonnage rates by distraint and sale of ship and tackle) of the 1847 Act as incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) is subject to the modification set out in paragraphs (2) and (3).

(2) Where the Harbour Authority has exercised any power of sale under section 44 (recovery of tonnage rates by distraint and sale of ship and tackle) of the 1847 Act, before rendering any overplus to the master of the vessel, the Harbour Authority shall apply such overplus in payment of any unpaid charge due to the PLA.

(3) In the exercise of the powers of section 44 (recovery of tonnage rates by distraint and sale of ship and tackle) of the 1847 Act as incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847)—

- (a) the Harbour Authority shall notify the PLA that it has exercised those powers in relation to any vessel;
- (b) the PLA shall not exercise its powers under section 39 (recovery and enforcement of charges) of the 1968 Act in respect of a vessel so notified; and
- (c) subject to sub-paragraph (b), nothing in this article affects the exercise of the PLA’s powers under that section.

### **Time when charges are payable and their recovery**

**38.**—(1) Charges which the Harbour Authority may demand, take and recover in respect of vessels shall be payable on the entry to London Gateway Port of any vessel in respect of which the charges are payable.

(2) Once payable, those charges may be demanded, taken and recovered by such persons, at such places and such times and under such terms and conditions as the Harbour Authority may from time to time appoint.

### **Security for charges**

**39.**—(1) The Harbour Authority may require any person who is liable, or intends to become liable, to pay charges to the Harbour Authority, to deposit with its collector, or to guarantee, such sum as is, in the opinion of the Harbour Authority, reasonable having regard to the amount of the charges.

(2) Where a person so required fails to deposit or guarantee the sum of money required, the Harbour Authority may, within the area of jurisdiction, detain the vessel in respect of which the charges have been or will be incurred until compliance with the requirement or until the charges are paid.

### **Disputes concerning rates**

**40.** Section 46 (disputes concerning rates or charges occasioned by distress) of the 1847 Act as incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) shall be read as though references to “a justice” were references to “a court of competent jurisdiction”.

### **Objection and arbitration in relation to charges**

**41.**—(1) Nothing in this Order shall affect the operation of section 31 (right of objection to ship, passenger and goods dues) of the 1964 Act.

(2) Article 66 (arbitration) shall not apply to articles 35 to 40 or to the provisions of the 1847 Act incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) which relate to those articles.

### **Power to appropriate berths, etc.**

**42.**—(1) Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the Harbour Authority may set apart or appropriate any berths, land or facilities within the port premises for the exclusive, partial or preferential use and accommodation of any particular trade, person, activity, vessel or goods or any class of trades, persons, activities, vessels or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Harbour Authority thinks fit.

(2) No person or vessel shall make use of any berth, land or facilities set apart or appropriated under this article without the consent of the Dockmaster or other duly authorised officer of the Harbour Authority and the Dockmaster or such officer may order any person or vessel making use of such a berth, land or facility without such consent to leave it.

(3) The provisions of section 58 (power of Harbour Master as to mooring of vessels in harbour) of the 1847 Act as incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) shall extend and apply to any such vessel.

### **Power to remove goods**

**43.**—(1) The Harbour Authority may remove goods which have been left on or in any part of the port premises where six hours have elapsed from the time when the Harbour Authority—

- (a) required the goods to be removed; or
- (b) left a notice on the goods requiring their removal.

(2) Such removal shall be to the Harbour Authority's or any other public warehouse or store and at the expense and risk of the owner.

(3) Goods removed pursuant to paragraph (1) shall be subject to a lien for the cost of removal, and for any charges payable to the Harbour Authority by the owner in respect of the goods.

(4) The Harbour Authority may prevent the removal of goods removed or placed in store under this article until all charges have been paid.

(5) Where the Harbour Authority has given seven days' notice to the owner of the goods, it may sell or otherwise dispose of the goods, and if so required by the owner, the Harbour Authority shall sell or otherwise dispose of the goods in such manner as it thinks fit and reimburse itself out of the proceeds of sale.

(6) The Harbour Authority shall hold any surplus of such proceeds of sale under paragraph (5) on trust for the person entitled to it.

(7) In this article "goods" includes vehicles and equipment.

### **Power to operate and use railways**

**44.**—(1) The Harbour Authority, or any person permitted by the Harbour Authority, may operate and use the railways comprised in the authorised works together with any ancillary works as a system, or part of a system, for the carriage of goods.

(2) The Harbour Authority may enter into agreements with Network Rail and the Office of Rail Regulation in connection with the construction, operation and use of the railways comprised in the authorised works.

### **Saving for regulated rights, etc.**

**45.** Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part 1 of the Railways Act 1993<sup>(1)</sup>.

### **Powers of disposal**

**46.**—(1) The Harbour Authority may, on such terms and conditions as it thinks fit, but with the consent of the Secretary of State (except in the case mentioned in paragraph (5)), sell, lease, charge, mortgage, encumber or otherwise dispose of the whole or any part of the undertaking or the right to operate the undertaking.

(2) Any disposal under paragraph (1) may, amongst other things, provide for—

- (a) the exercise of the functions of the Harbour Authority under this Order by any other person; and
- (b) for the transfer to any other person of the whole or any part of the undertaking together with the rights and obligations of the Harbour Authority in relation to the whole or any part of the undertaking transferred.

(3) The exercise of the powers of any enactment (including this Order) by any person in pursuance of any sale, lease, charge or disposal under paragraph (1), or any agreement under this article, shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the Harbour Authority.

(4) For the avoidance of doubt, the making by the Harbour Authority in relation to the port premises of—

- (a) any agreement; or
- (b) the grant of any right or interest in land (other than transfer of a freehold interest);

for the purpose of enabling any person other than the Harbour Authority to make use of, or to carry on the business of providing and operating services or facilities comprised within the port premises (whether or not provided by the Harbour Authority), does not constitute a disposal of the undertaking for the purposes of this article.

(5) The case referred to in paragraph (1) is the transfer by the Harbour Authority for a port-related use of a freehold interest in a single parcel of land within the area of jurisdiction of an area not exceeding 36 hectares (88.96 acres).

### **Conservation**

**47.**—(1) The Harbour Authority shall have the power to dedicate or designate for conservation or ecological purposes any land in which the Harbour Authority has an interest or over which it has control.

(2) The Harbour Authority shall not dedicate or designate under this article any land that abuts the river without the prior approval of the PLA, as provided for in paragraph 17 of Schedule 8.

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(1) 1993 c. 43.

### **Obstruction of officers**

**48.**—(1) Any person who—

- (a) intentionally obstructs an officer of the Harbour Authority who is acting in pursuance of this Order;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information or produce any document which he may require for the purpose of performance of his functions,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who, in giving such information as is mentioned in sub-paragraph (c) of paragraph (1), makes a statement which he knows to be false, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Nothing in paragraph (1) applies to the Harbour Master or to any person acting under the authority of the Harbour Master or the PLA.

### **Arrangements with Her Majesty's Revenue and Customs**

**49.** The Harbour Authority and Her Majesty's Revenue and Customs may enter into any such agreement or arrangement as they think fit to provide for, or to facilitate, the assessment, collection or recovery of charges, including an agreement or arrangement as to the provision and maintenance of accommodation at the port premises.

### **Agreements with Network Rail**

**50.**—(1) The Harbour Authority and Network Rail may enter into and carry into effect agreements with respect to the construction, maintenance, use and operation of—

- (a) any designated works, or any part of those works; and
- (b) any works required for the purposes of or in connection with any designated works or any part of those works,

by Network Rail or by the Harbour Authority, or by the Harbour Authority and Network Rail jointly.

(2) Any agreement made under this article may contain such incidental, consequential or supplementary provisions as may be agreed, including (but not limited to) provisions—

- (a) with respect to the defraying of, or the making of contributions towards, the costs of such construction, maintenance, use and operation as is referred to in paragraph (1), by the Harbour Authority or by Network Rail or by the Harbour Authority and Network Rail jointly; and
- (b) for the exercise by Network Rail or the Harbour Authority or by Network Rail and the Harbour Authority jointly, of all or any of the powers and rights of Network Rail and the Harbour Authority (as the case may be) in respect of any of the works referred to in paragraph (1) and any works required for those purposes or in connection with those purposes.

(3) The exercise by the Harbour Authority or Network Rail or by the Harbour Authority and Network Rail jointly of any powers and rights under any enactment or contract pursuant to any such agreement as is authorised by paragraph (2) shall be subject to all statutory and contractual provisions relating to those powers and rights as would apply if they were exercised by the Harbour Authority or Network Rail (as the case may be) alone and accordingly, such provisions shall, with any necessary modifications, apply to the exercise of such powers and rights by the Harbour Authority or Network Rail, or by the Harbour Authority and Network Rail jointly, as the case may be.

(4) The Harbour Authority and Network Rail may enter into, and carry into effect, agreements for the transfer to and vesting in Network Rail or the Harbour Authority, or the Harbour Authority and Network Rail jointly, of—

- (a) the designated works or any part of those works; or
- (b) any works, lands or other property required for the purposes of or in connection with any designated works or any part of those works,

together with any rights and obligations (whether or not statutory) of Network Rail or the Harbour Authority relating to any designated works or part of those works.

(5) In this article “designated works” means any part of the authorised works to be constructed on railway property.

#### **Power to establish a police force**

**51.**—(1) On application by the Harbour Authority a justice of the peace may appoint persons to be constables and a person so appointed shall, on appointment, be attested as a constable in accordance with section 29 of the Police Act 1996<sup>(2)</sup>.

(2) A justice of the peace may dismiss any constable appointed under paragraph (1) from his office and upon such dismissal all powers, protections and privileges vested in such a constable shall cease.

(3) A constable appointed under paragraph (1) may act as such within the area of jurisdiction and, subject to paragraph (5), whilst he is so acting he shall have all the powers and privileges of a constable.

(4) A constable appointed under paragraph (1) shall have powers of arrest within the area of jurisdiction and, where he pursues a person from the area of jurisdiction, shall have the same powers of arrest in respect of the person outside the area of jurisdiction as he would have within that area.

(5) Except in so far as it would otherwise conflict with his duties as a constable, the powers conferred on a constable appointed under this article are exercisable subject to paragraph 18 of Schedule 8 and for the purposes of that paragraph a constable shall be deemed to be an officer of the Harbour Authority.

#### **Incorporation of Police and Criminal Evidence Act 1984**

**52.** Part 1 (powers to stop and search), Part 2 (powers of entry, search and seizure), Part 3 (arrest), Part 4 (detention), Part 5 (questioning and treatment of persons by police) and Part 11 (miscellaneous and supplementary) of the Police and Criminal Evidence Act 1984<sup>(3)</sup>, together with Schedules 1, 2, 5, 6 and 7 to that Act, shall be incorporated in this Order so far as applicable to the operation, management and use of the authorised works and so far as not inconsistent with the provisions of this Order.

#### **Refusal of a landing place, etc.**

**53.**—(1) An officer of the Harbour Authority may prevent a vessel from using a landing place or berth provided by the Harbour Authority if the master of the vessel refuses to pay all applicable charges for such use.

(2) Subject to paragraph (3) an officer of the Harbour Authority may prevent a vessel from using a landing place or berth provided by the Harbour Authority if the master of the vessel refuses or is unable adequately to certify the origins, safety, identity or constitution of all or any freight, cargo, goods, materials, persons, animals or other things on board the vessel to the satisfaction of—

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(2) 1996 c. 16.

(3) 1984 c. 60.

- (a) the Harbour Authority;
- (b) any duly authorised official of Her Majesty's Government;
- (c) a constable;
- (d) Her Majesty's Coastguard;
- (e) the Harbour Master; or
- (f) any other person whose duty it is to ascertain the nature of items on board the vessel for the purposes of protecting the safety of any person either on board the vessel or elsewhere.

(3) Nothing in this article shall prevent the landing of a vessel that is under the control of an officer of the PLA or, in a case of emergency, under the direction of the PLA or one of its officers.

#### **Power to discharge surface water into the river**

**54.**—(1) Subject to the provisions of paragraphs 5 and 6 of Schedule 8, the Harbour Authority shall have the power to discharge surface water into the river.

(2) Nothing in this Order authorises the entry into controlled waters of any matters whose entry or discharge into controlled waters is prohibited by section 85 of the Water Resources Act 1991<sup>(4)</sup>.

#### **Harbour Authority not to be a local lighthouse authority**

**55.** Notwithstanding the provisions of section 193(2) of the Merchant Shipping Act 1995<sup>(5)</sup>, nothing in this Order constitutes the Harbour Authority as a local lighthouse authority.

#### **Harbour Authority not to be a port health authority**

**56.** Notwithstanding the provisions of section 2 of the Public Health (Control of Disease) Act 1984<sup>(6)</sup>, the Harbour Authority may not be designated as a port health authority.

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<sup>(4)</sup> 1991 c. 57.  
<sup>(5)</sup> 1995 c. 21.  
<sup>(6)</sup> 1984 c. 22.