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STATUTORY INSTRUMENTS

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**2010 No. 626**

**The Harwich Parkeston Quay Harbour Revision Order 2010**

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Power to lease etc.**

**15.**—(1) The Company may at any time lease or grant for the purposes of the harbour undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour undertaking for such period or periods and on such terms and conditions as may be agreed between the Company and the persons taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Company other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Act.

(3) Section 23 of the 1847 Act (power to lease wharfs, warehouses, etc.), as incorporated by any provisions of the Harwich Parkeston Quay enactments, shall cease to have effect so far as that section would otherwise apply to the harbour undertaking.

**Defence to proceedings in respect of statutory nuisance**

**16.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(1)</sup> (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work; and—

- (a) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974<sup>(2)</sup>; or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

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(1) 1990 c. 43.  
(2) 1974 c. 40.

shall not apply where the consent relates to the use of premises by the Company for the purposes of, or in connection with, the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work.

### **Protection of interests**

17. Schedule 3 has effect.

### **Arbitration**

18. Where under any provision of this Order, including any provision applied by this Order, any difference is to be referred to or settled by arbitration, then such difference 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.

### **Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994**

19.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(3)</sup> (“the Habitats Regulations”) shall not apply to any planning permission which relates to the authorised works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(4)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the authorised works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

### **Crown rights**

20.—(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 this nothing in this Order authorises the Company to take, use, enter on 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) may be given unconditionally or subject to such conditions and on such terms as may be considered necessary or appropriate.

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<sup>(3)</sup> S.I. 1994/2716.

<sup>(4)</sup> S.I. 1995/418.