

2012 No. 416

HARBOURS, DOCKS, PIERS AND FERRIES

The Dover Harbour Revision Order 2012

Made - - - - - *16th February 2012*

Coming into force - - - - - *16th March 2012*

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SCHEDULE — FOR PROTECTION OF SECRETARY OF STATE FOR
TRANSPORT

The Dover Harbour Board have applied for a harbour revision order under section 14 of the Harbours Act 1964(a) (“the Act”);

The Secretary of State having, in pursuance of paragraph 4 of Schedule 3 to the Act(b), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(c) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply to the Secretary of State the information referred to in Annex IV to the Directive;

The Secretary of State has in accordance with paragraph 15 of the said Schedule, furnished bodies appearing to him to have environmental responsibilities with the information supplied to him under paragraph 8 of that Schedule and has consulted such bodies;

The Secretary of State has considered the information supplied under paragraph 4 of Schedule 3 to the Act and is satisfied as mentioned in section 14(2)(b) of the Act;

The Secretary of State for Transport is the appropriate Minister under section 14(7) of the Act (d).

The Secretary of State, in exercise of the powers conferred by that section and now vested in her(e), makes the following Order:—

PART 1
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Dover Harbour Revision Order 2012 and shall come into force on 16th March 2012.

(2) The Dover Harbour Acts and Orders 1954 to 2006 and this Order may be cited together as the Dover Harbour Acts and Orders 1954 to 2012.

Interpretation

2.—(1) In this Order—

“the 1954 Act” means the Dover Harbour Consolidation Act 1954(f);

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- (a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c. 42), sections 63(1) and Schedule 3, paragraph 1.
- (b) Schedule 3 was substituted by the Harbour Works (Environmental Impact Assessment) Regulations 1999, S.I. 1999/3445, regulation 15(4) and Schedule 3 (amended by S.I. 2000/2391).
- (c) O.J. No. L175, 5.7.85, p. 40; Council Directive 85/337/EEC was amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.97, P. 5) and by Council Directive 2003/35/EC (O.J. No.L156, 25.6.2003, p.17).
- (d) For the definition of “the Minister” (mentioned in Section 14(7)), see section 57(1).
- (e) S.I. 1981/238, S.I. 1997/2971, S.I. 2001/2568 and S.I. 2002/2626.
- (f) 1954 c. iv (2&3 Eliz. 2)

“the Board” means the Dover Harbour Board;

“deposited plans, sections and elevations” means the plans, sections and elevations which are bound together and signed in duplicate by the Deputy Director, Maritime Commerce and Infrastructure in the Department for Transport with reference to this Order and marked “The Dover Harbour Revision Order 2012 Plans, Sections and Elevations” of which one copy is deposited at the offices of the Secretary of State for Transport and one copy is deposited at the office of the Board and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans, sections and elevations;

“harbour” means Dover Harbour and has the meaning assigned to it by section 4 of the 1954 Act;

“land” includes land covered by water, any interest in land and any right in, to or over land;

“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;

“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;

“the undertaking” has the meaning given by section 4 of the 1954 Act;

“works” means the works authorised by article 4 (power to construct works) of this Order.

(2) All points, directions lengths, areas and other measurements stated in this Order (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such point, direction, length, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

Limits of harbour

3. The limits of the harbour shall be the area of land the limits of which are shown edged by a red line on sheet number 26 and, accordingly, there shall be substituted for the definition of “the harbour” in section 4 of the 1954 Act, the following definition—

“the harbour” means Dover Harbour the limits of which are shown edged by a red line on sheet number 26 of the deposited plans being the deposited plans defined as such by article 2 of the Dover Harbour Revision Order 2012.

PART 2

WORKS PROVISIONS

Power to construct works

4.—(1) Subject to the provisions of this Order, the Board may in the lines and situations and upon the lands delineated on the deposited plans, sections and elevations and within the limits of deviation and according to the levels shown on the deposited plans, sections and elevations, construct and maintain the following works with all necessary connected works and conveniences—

Work No. 1 — A retaining wall to be constructed across the Wick Channel commencing at a point on the South Pier at TR3210840351 from there proceeding in a straight line and terminating at a point on the North Pier at TR3222540347 and the infilling and reclamation of so much of the Wick Channel and Tidal Basin as lies behind that wall together with the infilling and reclamation of Granville Dock comprising in part, the site of Works Nos. 12, 18(A), 20, 21, 23, 24, 25, 26, 27, 28, 29, 30 and 31 and as to the remainder as hardstanding for the parking and marshalling of vehicles, the location of which is shown on sheet no. 2 and sections of which are shown on sheet no. 11.

Work No. 2 — A retaining wall to be constructed across the Hoverport apron commencing at a point on the North Pier at TR3224240362 from there proceeding in a straight line and terminating at a point on the Prince of Wales Pier at TR3232840489 and the raising and levelling of so much of the Hoverport apron as lies behind that wall comprising in part, the site of Work No. 10, 11 and 32 and as to remainder as hardstanding for the parking and marshalling of vehicles, the location of which is shown on sheet no. 2 and sections of which are shown on sheet no. 11.

Work No. 3 — A quay wall faced in part with wave attenuation materials extending into the bed of the Outer Harbour and incorporating part of the Prince of Wales Pier and enclosing an area of 4.5 hectares of the bed of the Outer Harbour commencing at a point on the foreshore of the Outer Harbour at TR3193540822, extending for a distance of 890 metres and terminating at a point on the Prince of Wales Pier at TR3257140336; the enclosed area comprising in part, the site of Works Nos. 7, 8, 9, 11 18(A) and 32 and as to the remainder as hardstanding for the parking and marshalling of vehicles, the location of which is shown on sheet no. 3 and sections of which are shown on sheet no. 12.

Work No. 4 — A pier partly of solid construction commencing by a junction with Work No. 3 at a point on that work at TR3240340590 extending for a distance of 330 metres in a north easterly direction into the Outer Harbour and terminating at a point at TR3268340766; comprising in part, the site of Works Nos. 38, 39 and 40; to be used on the south eastern side as a berth for ferry vessels and on the north western side in part as berths for tugs, dredgers and other large work boats and as to the remainder as a fuel berth for vessels comprising piled moorings with a pontoon system connected to that side of the proposed pier by a link bridge, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 13.

Work No. 4A — A pier partly of solid construction forming a spur off Work No. 4 commencing at a point on that work at TR3264840745 extending for a distance of 110 metres in a north westerly direction into the Outer Harbour and terminating at a point at TR3258940835 comprising in part, the site of Work No. 38; and including the relocation and reconstruction on the north west end of the proposed pier of the lighthouse from the east end of the Prince of Wales Pier, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 13.

Work No. 5 — A pier partly of solid construction commencing by a junction with Work No. 3 at a point on that work at TR3254540471 extending for a distance of 320 metres in a north easterly direction into the Outer Harbour and terminating at a point at TR3281240644, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 13.

Work No. 6 — The provision of sheet piled toe protection and abutments to support fenders on the south side of part of the Prince of Wales Pier and an elevated concrete deck (partly supported on those abutments) over part of the Prince of Wales Pier commencing at a point on the Prince of Wales Pier at TR3238540454 and extending for a distance of 290 metres along that pier and terminating at a point at TR3262240293; and the provision of a new roundhead at the eastern end of the remaining part of the Prince of Wales Pier, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 13.

Work No. 7 — Mechanically and hydraulically operated double deck bridgeworks with a stair and lift tower and elevated passenger walkway together with a series of dolphins forming a berthing and mooring line to provide access to and egress from vessels commencing at a point on Work No. 3 at TR3242640567 extending for a distance of 113 metres in a north easterly direction into the Outer Harbour and terminating at a point at TR3251940628, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 14.

Work No. 8 — Mechanically and hydraulically operated double deck bridgeworks with a stair and lift tower and elevated passenger walkway together with a series of dolphins forming a berthing and mooring line to provide access to and egress from vessels commencing at a point on Work No. 3 at TR3252040487 extending for a distance of 117

metres in a north easterly direction into the Outer Harbour and terminating at a point at TR3261840551, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 14.

Work No. 9 — Mechanically and hydraulically operated double deck bridgeworks with a stair and lift tower and elevated passenger walkway together with a series of dolphins forming a berthing and mooring line to provide access to and egress from vessels commencing at a point on Work No. 3 at TR3255040441 extending for a distance of 117 metres in a north easterly direction into the Outer Harbour and terminating at a point at TR3264840505, the location of which is shown on sheet no. 3 and the section of which is shown on sheet no. 14.

Work No. 10 — Mechanically and hydraulically operated double deck bridgeworks with a stair and lift tower and elevated passenger walkway together with a series of dolphins forming a berthing and mooring line to provide access to and egress from vessels commencing at a point on Work No. 2 at TR3231040478 extending for a distance of 125 metres in a south easterly direction into the Inner Harbour and terminating at a point at TR3241440407, the location of which is shown on sheet no. 3 and the section of which is shown on sheet nos. 14.

Work No. 11 — An elevated four lane road to be constructed on land forming part of the sites of Work Nos. 2 and 3 to provide egress from Work No. 3 commencing at a point on Work No. 2 at TR3221540396 and terminating at a point on Work No. 3 at TR3252140428, the location of which is shown on sheet no. 4 and sections of which are shown on sheet no. 15.

Work No. 12 — An elevated four lane road to be constructed on land forming part of the site of Work No. 1 to provide access to and egress from that Work commencing at a point at TR3176440508 and terminating at a point at TR3191740567, the location of which is shown on sheet no. 4 and sections of which are shown on sheet no. 16.

Work No. 13 — A marina comprising-

(A) a pier of solid construction commencing on the foreshore of the Outer Harbour at a point at TR3195340856, extending for a distance of 532 metres in an easterly direction into the Outer Harbour and terminating at a point at TR3246440709 to be used in part as the site of Works Nos. 35, 36, and 37 and including the relocation and reconstruction on the western end of the pier of the Clock Tower and Clock Tower Building following the removal of that tower and building from the west end of the Prince of Wales Pier, the location of which is shown on sheet no. 5 and the section of which is shown on sheet no. 17; and

(B) piled moorings with a pontoon system connected to the south face of that pier by a series of link bridges.

Work No. 14 — A retaining wall to be constructed at the Union Street end of the Wellington Dock commencing at a point on Commercial Quay at TR3186540850 from there proceeding in a straight line and terminating at a point on Esplanade Quay at TR3197840817 and the infilling and reclamation of the small portion of the Wellington Dock that lies behind that wall to be used as roadways for vehicles and footpaths for pedestrians, the location of which is shown on sheet no. 5 and section of which is shown on sheet no. 17.

Work No. 15 — A retaining wall commencing on the Spur Pier at a point at TR3212940270 from there extending in a straight line to a point at TR3211240282 from there extending in a straight line to a point at TR3211840290 from there extending in a straight line to a point at TR3209540306 and from there extending in a straight line and terminating at a point on the Dunkirk Jetty at TR3209440312 and the infilling and reclamation of so much of the Spur Pier Basin as lies behind that wall to provide hardstanding for a boatyard and the provision of an enclosed area of water with a boat

hoist, the location of which is shown on sheet no. 2 and sections of which are shown on sheet no. 17.

Work No. 16 — A channel to be used by vessels navigating to and from the Wellington Dock commencing at a point on Esplanade Quay at TR3172140852 from there proceeding in a straight line and terminating at a point on the foreshore of the Outer Harbour at TR3184440815 having lock gates and an opening bridge over the channel, the location of which is shown on sheet no. 5 and the sections of which are shown on sheet no. 18.

Work No. 17 — An extension of solid construction of the Admiralty Pier commencing at a point at the eastern end of that pier at TR3303339948 and extending for a distance of 105 metres in an easterly direction and terminating at a point at TR3313839947 including the relocation and reconstruction on the east end of the proposed extension of the lighthouse following the removal of that lighthouse from the east end of the Admiralty Pier, the location of which is shown on sheet no. 6 and the section of which is shown on sheet no. 18.

Work No. 18 — Security fences comprising-

(A) a fence to comply with TRANSEC requirements, intercepted by Works Nos. 11, 12, 23, 32 and 38, having a height not exceeding 3.25m to be constructed along the lines shown on sheet no. 7, and an elevation of which is shown on sheet no. 19, and

(B) a fence (intercepted by a building comprising Work No.23) having a height not exceeding 2.75m to be constructed along the lines shown on sheet no. 8, and an elevation of which is shown on sheet no. 19.

Work No. 19 — The removal of the Prince of Wales roundabout and the construction in its place of an at grade signalised junction between Union Street, the A20 Snargate Street and the A20 Limekiln Street, the location of which is shown on sheet no. 9.

Work No. 20 — Six single storey buildings with a canopy over to be used for outbound border control and security checks, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 19.

Work No. 21 — A single storey building to be used for security checks of tourist vehicles and passengers, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 20.

Work No. 22 — A single storey building to be used for security checks of freight vehicles and occupants, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 20.

Work No. 23 — Seven single storey buildings with a canopy over to be used for security checks of outbound freight and tourist vehicles and bicycles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 21.

Work No. 24 — A single storey building to be used as a drivers' reception facility, the location of which is shown on sheet no. 10 and the plans and elevations of which are shown on sheet no. 20.

Work No. 25 — A single storey building to be used for border control and security checks of tourist vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 20.

Work No. 26— A single storey building to be used for border control and security checks of coach passengers, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 21.

Work No. 27 — A single storey building to be used for border control and security checks of tourist vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 22.

Work No. 28 — A single storey building to be used for border control and security checks of freight vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 20.

Work No. 29 — A single storey building to be used for border control and security checks of freight vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 21.

Work No. 30 — A single storey building to be used for scanning vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 22.

Work No. 31 — A single storey building for border control and security checks including the offloading of freight vehicles, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 23.

Work No. 32 — A double storey terminal building to be used for passenger and baggage handling, management offices and for the provision of retail, refreshments and toilet facilities for passengers and other members of the public, the location of which is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 23.

Work No. 33 — A single storey building to be used for the customs clearance of goods, the location of which is shown on sheet no.10 and the plan and elevations of which are shown on sheet no. 24.

Work No. 34 — A two storey building to be used as the machinery house and control room for the operation of the lock gates and opening bridge forming part of Work No. 16, the location of that building is shown on sheet no. 10 and the plan and elevations of which are shown on sheet no. 24.

Work No. 35 — A two storey building comprising a marina office, facilities for the users of the proposed marina (Work No. 13) and the general public to be constructed on the proposed pier comprising Work No. 13(A), the location of which is shown on sheet no. 5 and the plan and elevations of which are shown on sheet no. 24.

Work No. 36 — A two storey building comprising retail, refreshment and toilet facilities for members of the general public to be constructed on the proposed pier comprising Work No. 13(A), the location of which is shown on sheet no. 5 and the plan and elevations of which are shown on sheet no. 25.

Work No. 37 — A two storey building comprising facilities for use as a lifeboat station to be constructed on the proposed pier comprising Work No. 13(A), the location of which is shown on sheet no.5 and the plan and elevations of which are shown on sheet no.25.

Work No. 38 — A two storey building comprising a workshop, offices and stores to be constructed on the parts of the proposed piers comprising Works Nos. 4 and 4(A), the location of which is shown on sheet no.3 and the plan and elevations of which are shown on sheet no.25.

Work No. 39 — A single storey building to be used as an office and pump house to be constructed on the proposed pier comprising Work No. 4, the location of which is shown on sheet no. 3 and the plan and elevations of which are shown on sheet no. 25.

Work No. 40 – A two storey building and lifeboat davit to be used as a safety training facility to be constructed on the proposed pier comprising Work No. 4, the location of which is shown on sheet no. 3 and the plan and elevations of which are shown on sheet no. 25.

Work No. 41— The removal of the existing York Street roundabout and the construction in its place of an at grade signalised junction between the A256 York Street, the A20 Townwall Street and the A20 Snargate Street, the location of which is shown on sheet no. 9.

(2) Subject to the provisions of this Order, the Board may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus and level any surface lying within the limits of deviation (including, and without prejudice to the generality of the foregoing, so much of the Prince of Wales Pier as may be deemed necessary or convenient) and 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 undertaking.

(3) Subject to the provisions of this Order, the Board may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works and may maintain those works as so reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

5.—(1) Subject to the provisions of this Order, in carrying out the works, other than Work Nos. 18(A) and 18(B), the Board may deviate laterally from the lines or situations as shown on the deposited plans, sections and elevations to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as shown on the deposited plans, sections and elevations to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

(2) In carrying out Work Nos. 18(A) and 18(B), the Board may deviate vertically up to 0.5 metres above the height specified in article 4 (power to construct works) and laterally from the lines or situations shown on the deposited plans, sections and elevations to any extent not exceeding 10 metres in any direction.

Subsidiary works

6.—(1) The Board may from time to time within the limits of deviation provide and operate such dock facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the undertaking, and for this purpose the Board may construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, dolphins, mooring posts, pontoons, catwalks, equipment, signage, machinery and appliances and such other works and conveniences (including levelling of surfaces) as may be necessary or expedient.

(2) Without prejudice to paragraph (1) the Board may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in

connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and loading of passengers; and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Period for completion of works

7.—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Board allow, then on the expiration of that period or such extended time (as the case may be) the powers granted by this Order to the Board for making and maintaining the works shall cease except as to so much of them as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 4 (power to construct works) or article 6 (subsidiary works).

Operational land for purposes of the Town and Country Planning Act 1990

8. The planning permission granted by article 3 of the Town and Country Planning (General Permitted Development) Order 1995(a) for the development authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990(b) (cases in which land is to be treated as operational land for the purposes of that Act).

Obstruction of work

9. Any person who—

- (a) intentionally obstructs any person acting under the authority of the Board in setting out the lines of or in constructing the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

10.—(1) Unless its construction has commenced within ten years of the coming into force of this Order, a tidal work shall not be demolished, constructed, reconstructed, extended, enlarged, 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 the Secretary of State before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, enlarged, 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 Board at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the Board they have failed to take reasonable steps 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 to do so, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition;

(a) S.I. 1995/418.

(b) 1990 c.8.

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Board.

Lights on tidal works during construction

11.—(1) The Board shall at or near a tidal work during the whole time of the demolition, construction, reconstruction, extension, enlargement, replacement or relaying thereof, 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 shall from time to time direct.

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

Permanent lights on tidal works

12.—(1) After the completion of a tidal work the Board shall at the outer extremity of that work 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 Trinity House shall from time to time direct.

(2) If the Board 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 the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

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

(2) If the Board fail to comply in any respect with the provisions of this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Survey of tidal works

14. If the Secretary of State deems it expedient to do so, the Secretary of State may 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 such a survey and examination shall be recoverable from the Board.

Abatement of works abandoned or decayed

15.—(1) Where a tidal work is abandoned, or has fallen into decay, the Secretary of State may by notice in writing require the Board at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site of the tidal works 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 has fallen into decay and that part of the work on or over land above the level of high water is in such 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 of it, 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 Board, 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 the Secretary of State in so doing shall be recoverable from the Board as a debt.

PART 3
MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

16.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by the Board 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
- (b) 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 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
- (c) 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);

shall not apply where the consent relates to the use of premises by the Board 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.

Defence of due diligence

17.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) it shall be a defence for the Board to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- article 11 (lights on tidal works during construction);
- article 12 (permanent lights on tidal works); and
- article 13 (provision against danger to navigation).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Board shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

(a) 1990 c. 43.

(b) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

Saving for Trinity House

18. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Crown rights

19.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Board to take, use, enter upon or in any manner interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and forming part of the Crown Estate, without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) 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 terms and conditions and shall be deemed to have been given in writing where it is sent electronically.

Saving for other consents, etc.

20. The carrying out of any works or operations pursuant to this Order is subject to the Board obtaining any consent, permission or licence required under any other enactment.

For protection of Secretary of State for Transport

21. The provisions of the Schedule to this Order shall have effect.

Signed by authority of the Secretary of State for Transport

16th February 2012

Richard Bennett
Deputy Director
Department for Transport

SCHEDULE

Article 21

FOR PROTECTION OF SECRETARY OF STATE FOR TRANSPORT

1. The provisions of this Schedule shall, unless otherwise agreed in writing between the Board and the Highways Agency (“the Agency”), acting on behalf of the Secretary of State for Transport, have effect for the protection of the Secretary of State.

2. Where any consent, approval or agreement is required to be given by the Agency pursuant to this Schedule, it shall not be unreasonably withheld or delayed.

3. Before the Board commences the construction of Works Nos. 19 and 41 the Board must first notify the Agency in writing.

4. During the development and construction of Works Nos. 19 and 41 and any other works that have a material impact on the integrity or operation of the A20 Trunk Road, the Board shall at all times comply with all reasonable requirements of the Agency as to public safety, standards of construction and traffic management and shall construct Works Nos.19 and 41 under the supervision (if given) of the Agency.

5. For the purposes of Works Nos. 19 and 41, or of complying with the requests of the Agency pursuant to paragraph 4, the Board may act as an agent of the Agency.

6. The Board and the Agency shall enter into agreements with respect to the construction of the whole or any part of Works Nos. 19 and 41 and those agreements will (without limitation on the scope of this paragraph)—

- (a) make provision for the Board or the Agency to carry out any functions under this Order which relate to Works Nos. 19 and 41 and for those purposes section 278 of the Highways Act 1980(a) (“the 1980 Act”) shall be construed as permitting the Board or those authorised on its behalf to carry out works in the public highway;
- (b) provide for the vesting (when completed) of the whole or any part of Works Nos. 19 and 41 in the Agency; and
- (c) contain such terms as to funding or otherwise as the parties consider appropriate.

7. Nothing in this Order shall prevent the Agency at its own cost from constructing pursuant to its existing powers under the 1980 Act the whole or any part of Works Nos. 19 and 41.

8. The Board must reimburse to the Agency the reasonable costs incurred by the Agency for any supervision by the Agency of the Board pursuant to paragraph 4.

9. This Schedule is without prejudice to the operation of section 278 of the 1980 Act.

(a) 1980 c.66.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Dover Harbour Board (the applicants for the Order) to construct and maintain works at the Western Docks in Dover Harbour.

The Order also extends the limits of jurisdiction of the Board as harbour authority for Dover Harbour.

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