
STATUTORY INSTRUMENTS

1996 No. 2037

The Harwich Parkeston Quay Harbour Revision Order 1996

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.

(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(1) 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.

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(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⁽²⁾, the Salmon and Freshwater Fisheries Act 1975⁽³⁾, 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.

(2) 1991 c. 59.
(3) 1975 c. 51.