
STATUTORY INSTRUMENTS

2010 No. 626

HARBOURS, DOCKS, PIERS AND FERRIES

The Harwich Parkeston Quay Harbour Revision Order 2010

Made - - - - - *3rd March 2010*

Coming into force - - - - - *17th March 2010*

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

The Secretary of State is satisfied as mentioned in section 14(2)(b) of the Act.

The Secretary of State (being the appropriate Minister under section 14(7)(2) of the Act) in exercise of the powers conferred by that section and now vested in the Secretary of State(3) makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Harwich Parkeston Quay Harbour Revision Order 2010 and comes into force on 17th March 2010.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(4);

“the 1983 Act” means the Parkeston Quay Act 1983(5);

“area of seaward construction activity” means the area of the sea within the limits of deviation shown on the deposited plans;

“the authorised works” means the works and operations authorised by article 3 and article 5;

(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 2.

(2) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(3) S.I. 1981/238, S.I. 1997/2971 and S.I. 2001/2568.

(4) 1847 c. 27.

(5) 1983 c. vi.

“boat harbour” means the area bounded by a line drawn from Trinity Pier commencing at the landward end of that pier at a point at TM2580832662, then extending in a south-easterly direction along the Trinity House buoy yard quay wall to a point at TM2585832568, then continuing along the wall in a south-westerly direction to a point at TM2584132553, then extending in a south-easterly direction towards the A120 to a point at TM2587932513, then continuing in a south-westerly direction to a point at TM2582832465, then extending in a north-westerly direction to a point at TM2579132479, then in a south-westerly direction to a point at TM2569132454, then in a south-westerly direction to a point at TM2564332368, then in a westerly direction to a point at TM2558132366, then in a northerly direction to a point at TM2558832684, then in an easterly direction to a point at TM2561432683, then in a north-easterly direction to a point at TM2573132747 then in a north-easterly direction to a point at TM2574232748, then in a south easterly direction to a point at TM2580032661, then passing by the shortest line in an easterly direction and terminating at the point of commencement and for the purpose of identification only is shown cross hatched black on sheet 5 of the deposited plans;

“the Company” means Harwich International Port Limited a company incorporated in England with registered number 2486146;

“deposited plans” and “deposited sections” mean respectively the plans and sections prepared in duplicate signed by the Head of the Ports Division in the Department for Transport and marked “The Harwich Parkeston Quay Harbour Revision Order 2010”, of which copies are deposited at the offices of the Secretary of State for Transport and the registered office of the Company;

“existing” means existing at the commencement of this Order;

“the harbour undertaking” means the undertaking of the Company authorised by the Harwich Parkeston Quay enactments;

“Harwich Haven Authority” means the body having that name pursuant to section 12 of the Harwich Harbour Act 1988⁽⁶⁾ and has the meaning assigned by the Harwich Harbour Acts and Orders 1973 to 2000;

“Harwich Parkeston Quay enactments” means the enactments specified in Schedule 1 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;

“mooring” includes any buoy, pile, pontoon, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“the river” means the river Stour;

“tidal work” means so much of the authorised works 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.

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

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

(6) 1988 c. xxxiv.

PART 2

WORKS PROVISIONS

Power to make works

3.—(1) Subject to the provisions of this Order, the Company may, in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the following works, with all necessary works and conveniences connected with them, as to part in the parish of Harwich and Ramsey and as to the remainder in the parish of Parkeston, in the district of Tendring, in the county of Essex, and partly on the foreshore and bed of Bathside Bay—

Work No. 1 - A quay wall, including berths for vessels and quayside cranes, commencing with a junction at the termination of the existing quay wall of Parkeston Quay at its eastern end (point C shown on the deposited plans and deposited sections), then extending in a straight line to a point at TM2562632679 (point D shown on the deposited plans and deposited sections), then extending in a straight line to a point at TM2562232490 (point E shown on the deposited plans and deposited sections), then extending in a straight line and terminating at a point at TM2564832490 (point F shown on the deposited plans and deposited sections) and enclosing an area of 74.55 hectares of the bed of Bathside Bay being the area enclosed by that quay wall and the line of mean high water springs shown on the deposited plans and deposited sections commencing at point C and terminating at point F.

Work No. 2 - A culvert, being an extension of the existing Dovercourt Dock River culvert, commencing at the existing outfall chamber and extending in a straight line and terminating at an outfall to be constructed in the proposed quay wall comprising part of Work No. 1 at a point 30 metres east of the commencement of Work No. 1.

Work No. 3 - A harbour wall incorporating an access walkway of solid construction commencing at the proposed quay wall comprising part of Work No. 1 at point D shown on the deposited plans and deposited sections and extending in a north-easterly direction and terminating at a point at TM2574332746 and having a length of 137 metres and a width not exceeding 13.7 metres.

Work No. 4 - A floating wavescreen of segmental fibre and galvanised steel reinforced concrete boxes with expanded polystyrene cores and anchored to the bed of the boat harbour, commencing at a point at TM2581232631 extending in a north westerly direction along the south side of the train ferry gantry for a distance of 110 metres and terminating at a point at TM2571232676.

Work No. 5 - A slipway adjacent to the proposed quay wall forming part of Work No. 1, commencing at point E shown on the deposited plans and deposited sections and terminating in the boat harbour at a point at TM2562732556.

(2) The Company may, within the limits of deviation, from time to time alter or reconstruct temporarily or permanently the authorised works.

(3) The Company may fill in and reclaim, or complete the reclamation of, so much of the foreshore and bed of Bathside Bay as is situated within the limits of deviation landward of the line of Work No. 1, and may hold and use, as part of the harbour undertaking or for other purposes of the Company, so much of that foreshore and bed as is required for or in connection with those purposes and may hold and use or dispose of the remainder for other purposes.

(4) The Company may, when constructing Work No. 3, demolish the train ferry pier to the extent shown on the deposited plans and deposited sections.

(5) For the purposes of section 23 of the Land Drainage Act 1991⁽⁷⁾ (prohibition on obstructions etc in watercourses) as applying to the construction of the authorised works, any consent or approval by the Environment Agency given or deemed to be given under any provision of this Order with respect to the erection of any structure shall be deemed also to constitute a consent or approval under the said section 23 as respects the erection of that structure.

Period for completion of works

4. 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 Company 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 Company for making and maintaining the works shall cease except as to so much of the works as are then substantially commenced.

Subsidiary works

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

(2) Without prejudice to paragraph (1), the Company 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 (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Power to dredge

6.—(1) The Company may (subject to the consent required by section 34 (crown rights) of the 1983 Act as applied by paragraph 1 of Part 1 of Schedule 3) from time to time deepen, dredge, scour, cleanse, alter and improve the bed, channel and foreshore of the river in the vicinity of the authorised works and the approaches to the river, and blast any rock in the river, for the purpose of constructing and maintaining those works and obtaining, preserving and improving uninterrupted access to and from those works or any other part of the harbour undertaking.

(2) Subject to paragraph (3), any materials taken up or collected in the course of such operations shall (subject to the consent required by section 34 of the 1983 Act) be the property of the Company and may be used, sold, removed, deposited or otherwise disposed of as the Company may think fit.

(3) No such materials shall be deposited below the level of high water except in accordance with—

- (a) such conditions and restrictions as may be approved by the Secretary of State; and
- (b) Part 2 of the Food and Environment Protection Act 1985⁽⁸⁾.

(7) 1991 c. 59.

(8) 1985 c. 48.

Power to deviate

7.—(1) In the construction of any part of the authorised works the Company may deviate from the lines or situations shown on the deposited plans to any extent not exceeding the limits of deviation, and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

(2) Notwithstanding the limits of deviation shown on the deposited plans, when the authorised works have been constructed the northerly limit of deviation of Works Nos. 1, 2, 3, 4 and 5 shall be 3 metres north of, respectively, the line of the proposed quay face and the centre line of Work No. 3, both as shown on the deposited plans.

Application of works provisions of 1983 Act

8.—(1) The following provisions of the 1983 Act relating to the construction of works shall, with the necessary modifications, apply additionally to the authorised works (including the demolition of the train ferry pier) as they apply to the works authorised by that Act as if the authorised works had been the quay and connected works authorised by those enactments—

Section 9 – (underpinning of buildings near works);

Section 10 - (use of sewers, etc., for removing water);

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) The necessary modifications referred to in paragraph (1) are—

(a) In section 10, leave out subsection (3) and insert—

“(3) This section does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(9).”

(b) In sections 11 to 16 the words “tidal work” have the meaning given by article 2.

(c) In subsection (1) of section 13, after “near” insert “(a)” and after “work” insert—

“, including any temporary work; or

(b) any plant, equipment or other obstruction placed, in connection with any work authorised by article 3 (power to make works) or article 5 (subsidiary works) of the Harwich Parkeston Quay Harbour Revision Order 2010, within the area of seaward construction activity;”.

Extent of Parkeston Quay and limits of jurisdiction

9.—(1) The authorised works shall form part of Parkeston Quay and the provisions of the Great Eastern Railway Act 1874(10) 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)

(9) 1991 c. 57.

(10) 1874 c. cxxviii.

apply to the authorised works as if the authorised works had been the quay and connected works authorised by those enactments.

(2) The limits of jurisdiction for Parkeston Quay shall be the area described in Schedule 2 and, for the purpose of identification only, shown edged red on sheet 4 of the deposited plans and deposited sections.

(3) In its application to the harbour undertaking the expression “the prescribed limits” in the 1847 Act shall be the area referred to in paragraph (2).

Planning, etc. jurisdiction

10.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the limits of deviation shall, for the purposes of the Control of Pollution Act 1974⁽¹¹⁾ and the Town and Country Planning Act 1990⁽¹²⁾, be annexed to and incorporated with the district of Tendring.

(2) On the accretion date, the area of the whole or of so much of the works authorised by paragraphs (1) and (2) of article 3 as shall have been completed or substantially commenced shall be annexed to and incorporated with the parishes of Harwich and Ramsey and Parkeston (in proportion to the extent of the common boundary of those parishes), the district of Tendring and the county of Essex.

(3) In this article “accretion date” means the date when the works so authorised have been completed or, if sooner, the date when the powers granted by this Order shall cease to have effect pursuant to article 4.

PART 3

BOAT HARBOUR

Restriction of boat harbour to pleasure craft and certain other vessels

11.—(1) Notwithstanding section 33 of the 1847 Act (harbour, dock and pier to be free to the public on payment of rates), as incorporated by any provision of the Harwich Parkeston Quay enactments, but subject to article 13, the waters of the boat harbour shall be for the exclusive use of vessels falling within paragraph (2) and accordingly the Company shall not permit any other vessel to use those waters.

(2) Each of the following vessels fall within this paragraph—

- (a) a recreational craft including a craft used for recreational fishing;
- (b) a vessel which is, for the time being, used for or in connection with sea fishing for profit;
- (c) the vessel used at the date when the works have been substantially completed by the Harwich and Dovercourt Sailing Club as its clubhouse and any replacement vessel which is so used and which, in either case, shall have a length not exceeding 26 metres and a beam not exceeding 7 metres; and which shall be permanently moored alongside Work No. 5;
- (d) a vessel for the time being employed for the purposes of any of the functions of the Company;
- (e) a vessel for the time being employed in connection with the provision of services at the boat harbour or on lands adjacent to the boat harbour;

(11) 1974 c. 40.

(12) 1990 c. 8.

- (f) a lifeboat or a vessel used by the coastguard service, the Essex Sea Fisheries Committee, the Environment Agency, the Harwich Haven Authority, Trinity House or the Ministry of Defence; or
 - (g) any vessel operated pursuant to an agreement in writing with the Harwich Haven Authority.
- (3) In paragraph (2), “recreational craft” means any vessel of not more than 30 tons gross used wholly or mainly for recreation and not for the carriage of passengers or goods for reward.
- (4) For the purposes of this article, the tonnage of a vessel shall—
- (a) in the case of a vessel having a tonnage figure recorded in its certificate of registry, be taken to be that figure; and
 - (b) in the case of any other vessel, be calculated in accordance with the provisions of Part 3 of the Merchant Shipping (Tonnage) Regulations 1997⁽¹³⁾.

Powers as to moorings, etc.

12.—(1) The Company may within the boat harbour provide, place, lay down, maintain, use and have moorings for vessels—

- (a) on land owned or leased by the Company or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee of land, on any other land in the boat harbour.

(2) The Company may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Company such charges as the Company may from time to time prescribe.

(3) The Company may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Company may give notice in writing to the person having the control of any vessel using any mooring in the boat harbour at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Company to provide, place or lay down moorings in accordance with paragraph (1).

(5) If any person fails to comply with a notice given by the Company under this paragraph, the Company may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(6) The Company may from time to time grant to a person a licence to place, lay down, maintain, use and have existing and future moorings, for vessels in the boat harbour.

(7) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any mooring on land not owned or leased by that person or by the Company or in which that person has no appropriate interest.

(8) Any such licence shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with its date.

(9) The Company may charge for such a licence such fee as the Company may from time to time prescribe.

(10) Sections 43 to 48 of the 1847 Act shall apply in relation to fees charged under this article.

(11) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings; or

⁽¹³⁾ S.I. 1997/1510, amended by S.I. 1998/1915.

- (b) intentionally and without lawful authority pulls up or removes any mooring in the boat harbour or any part of the boat harbour; or
- (c) without reasonable excuse causes or permits a vessel to be moored in the boat harbour except at a mooring provided or licensed by the Company under this article or at a quay, jetty, slipway or other work or to land owned or leased by the Company; or
- (d) places, lays down or maintains in the boat harbour any mooring not provided or licensed by the Company under this article,

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

(12) If any person places, lays down or maintains in the boat harbour any mooring not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person the expenses incurred in doing so.

(13) Before exercising the powers of paragraph (1) the Company shall notify the Harwich Haven Authority and shall provide details of the proposed exercise including plans showing the proposed position and nature of the mooring.

(14) In this article “vessel” does not include a houseboat.

Preferred vessels

13.—(1) During the period of one year commencing with the date when Works Nos. 3, 4 and 5 have been substantially completed the Company shall provide moorings within the boat harbour for preferred vessels.

(2) Subject to paragraph (3), in this article “preferred vessels” means the vessels designated as such during the period mentioned in paragraph (1) by the bodies specified in the first column of the following table, being vessels which shall not exceed the number specified in the second column of that table and which shall not exceed the length specified in the third column of that table—

<i>Designating body</i>	<i>Maximum number of vessels which may be designated</i>	<i>Maximum length of designated vessels</i>
Harwich and Dovercourt	(a) 36 vessels (b) 20 vessels	8 metres
Sailing Club	(c) 4 vessels	10 metres
		12 metres
Harwich Fishermen’s Association	(a) 10 vessels (b) 8 vessels	10 metres
		12 metres
Harwich Small Boat Owners Association	18 vessels	12 metres

(3) The vessel referred to in paragraph (2)(c) of article 11 shall, for the purposes of this article be a preferred vessel and shall continue to be such after the expiry of the period mentioned in paragraph (1) so long as it is—

- (a) used as the clubhouse of the Harwich and Dovercourt Sailing Club; and
- (b) permanently moored in the manner specified in paragraph (2)(c) of article 11.

(4) The Company may levy on a preferred vessel any of the charges leviable by or under any of the provisions of the Act.

Power to appropriate part of boat harbour

14.—(1) Subject to articles 11 and article 13, the Company may from time to time set apart and appropriate any part of the boat harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel shall make use of any part of the boat harbour so set apart or appropriated without the consent of the Company’s officer or other duly authorised officer of the Company, and—

- (a) the Company’s officer or, as the case may be, such duly authorised officer, may order any person or vessel making use of the boat harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by any provisions of the Harwich Parkeston Quay enactments, shall extend and apply with the necessary modifications to any such vessel.

(3) In this article, “Company’s officer” means any person exercising the functions of a harbour master on behalf of the Company.

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⁽¹⁴⁾ (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⁽¹⁵⁾; or

⁽¹⁴⁾ 1990 c. 43.

⁽¹⁵⁾ 1974 c. 40.

- (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),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⁽¹⁶⁾ (“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⁽¹⁷⁾ 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

⁽¹⁶⁾ S.I. 1994/2716.

⁽¹⁷⁾ S.I. 1995/418.

- (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.

Signed by authority of the Secretary of State for Transport

3rd March 2010

Richard Bennett
Head of Ports Division
Department for 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 1

Article 2(1)

THE HARWICH PARKESTON QUAY ENACTMENTS

<i>Chapter or number</i>	<i>Title of Act or Order</i>	<i>Enactments</i>
1874 c. cxxviii	Great Eastern Railway Act 1874	Section 2 so far as it incorporates the 1847 Act, section 4 so far as it applies to the quay and connected works and operations authorised by it, 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 1847 Act, section 3, section 4 so far as it applies to Work (A) authorised by it, 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 1847 Act, 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 authorised by it, sections 7 to 9 and 22 to 28
1981 c. xxxv	British Railways (No. 2) Act 1981	Part 5
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
S.I. 1996/2037	Harwich Parkeston Quay Harbour Revision Order 1996	The whole Order

SCHEDULE 2

Article 9

LIMITS OF JURISDICTION OF PARKESTON QUAY

An area bounded by an imaginary line commencing at a point (1) at TM2415632915, then following a line 200 metres riverward from the line of the existing quay face in a westerly direction to a point (2) at TM2327532939, then following a line 200 metres riverward from the line of the existing quay face in a west-south-westerly direction to a point (3) at TM2293932895, then in a south-westerly direction to a point (4) at TM2276132760, then in a straight line in a westerly direction to a point (5) at TM2257532760, then in a south-westerly direction to a point (6) at TM2252532710, then in a straight line in a southerly direction to a point (7) at TM2252532647, then in a west-south-westerly direction to a point (8) at TM2200532541, then in a straight line in a southerly direction

to a point (9) at TM2208231716, then in a straight line in an easterly direction to a point (10) at TM2218631733, then in a north-easterly direction to a point (11) at TM2268932401, then in a straight line in a south-easterly direction across the railway to a point (12) at TM2271632359, then in a south-easterly direction to a point (13) at TM2307932154, then in a straight line in an east-north-easterly direction to a point (14) at TM2310832163, then in an east-south-easterly direction to a point (15) at TM2322332138, then in a straight line in a south-south-easterly direction to a point (16) at TM2324632090, then in a straight line in an east-north-easterly direction to a point (17) at TM2356332180, then in a south-easterly direction to a point (18) at TM2362032113, then in a straight line in a north-easterly direction to a point (19) at TM2363332129, then in a north-westerly and northerly direction to a point (20) at TM2359232376, then in a straight line in an easterly direction to a point (21) at TM2362932367, then in a straight line in a southerly direction to a point (22) at TM2362132327, then in a straight line in a south-south-easterly direction to a point (23) at TM2363632274, then in a straight line in an east-north-easterly direction to a point (24) at TM2364632277, then in a straight line in a north-north-westerly direction to a point (25) at TM2364032297, then in a straight line in an easterly direction to a point (26) at TM2365032296, then in a straight line in a north-north-easterly direction to a point (27) at TM2366732369, then in an east-south-easterly direction to a point (28) at TM2382832341, then in an east-south-easterly direction to a point (29) at TM2392732287, then in a south-easterly direction to a point (30) at TM2397232216, then in a straight line in an east-north-easterly direction to a point (31) at TM2406332229, then in a south-easterly direction to a point (32) at TM2410832135, then in a straight line in a north-easterly direction to a point (33) at TM2417532197, then in a straight line in a south-easterly direction to a point (34) at TM2419132182, then in a straight line in a north-easterly direction across the railway line to a point on the northern boundary fence of that railway (35) at TM2429632273, then in a south-easterly and thereafter an easterly direction along the northern boundary fence of that railway to a point (36) at TM2562931817, then in a straight line in a north-easterly direction to a point (37) at TM2566431877, then in a straight line in a north-westerly direction across the A120 road to a point (38) at TM2562131918, then in a northerly direction following the western boundary of that road to a point (39) at TM2561631970, then in a straight line in a north-north-easterly direction to a point (40) at TM2562831992, then in a northerly direction following the western boundary along the eastern side of Gas House Creek to a point (41) at TM2584232448, then in a straight line in a north-westerly direction to a point (42) at TM2582832465, then in a north-easterly direction to a point (43) at TM2587932513, then in a straight line in a north-westerly direction to a point (44) at TM2584132553, then in a straight line in a north-easterly direction to a point (45) at TM2585832568, then in a north-westerly direction to a point (46) at TM2581332632, then in a south-easterly direction to a point (47) at TM2581932631, then in a north-easterly direction to a point (48) at TM2582332640, then in a north-westerly direction to a point (49) at TM2581132647, then in a north-north-westerly direction to a point (50) at TM2580732662 then in a north-easterly direction to a point (51) at TM2580832662 then in a north-north-westerly direction following the western face of the Trinity Pier to a point (52) at TM2577032849, then in a straight line in a west-south-westerly direction to a point (53) at TM2562732781, then in a straight line in a southerly direction to a point (54) at TM2562532749, then following a line 70 metres riverward from the line of the proposed quay face in a westerly direction to a point (55) at TM2436732781, then in a north-westerly direction and terminating at the point of commencement.

SCHEDULE 3

Article 17

PROTECTIVE PROVISIONS

PART 1

Application of protective provisions of 1983 Act

1. The following protective provisions of the 1983 Act shall apply for the purposes of this Order subject to the necessary modifications specified in paragraphs 2 and 3 below—

Section 28 - (for protection of British Telecommunications);

Section 32 - (for protection of electricity, gas and water undertakings);

Section 33 - (saving for Trinity House);

Section 34 - (crown rights).

2.—(1) In section 28 of the 1983 Act, for the reference to section 6 of the 1983 Act, there shall be substituted reference to article 6 of this Order.

(2) In section 32 of the 1983 Act—

(a) references to the Eastern Electricity Board shall be omitted;

(b) for the purposes of subsections (10) to (13) of that section, reference in subsection (10) to apparatus the removal of which has not been required shall include apparatus of a public gas supplier within the meaning of Part 1 of the Gas Act 1986⁽¹⁸⁾ situated within 50 metres of the works mentioned in that paragraph whether or not that apparatus is situated within the limits of deviation; and

(c) there shall be inserted the following subsection—

(i) “(14) Before operations for blasting any rock are carried out under article 6 of the Harwich Parkeston Quay Harbour Revision Order 2010 within 150 metres of any apparatus belonging to or maintained by a public gas supplier, the Company shall give in writing to that supplier not less than 28 days’ notice of its intention to do so.”.

3. Section 33 of the 1983 Act shall have effect subject to Part 2 of this Schedule.

PART 2

For further protection of Trinity House

4.—(1) For the further protection of Trinity House the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Company and Trinity House, apply and have effect.

(2) In this Part of this Schedule—

“the Trinity Pier” means the Trinity Pier of Trinity House as existing;

“the Trinity Pier protected area” means the area between the pier and an imaginary line drawn from the riverward end of the pier at a point at TM2577032849 to a point 30 metres in a north-easterly direction at a point at TM2580032854, then extending through an arc of 30 metres centred on the riverward end of the pier to a point at TM2576532879 and then continuing through that arc to a point 30 metres distant from the western face of the pier at a point at

⁽¹⁸⁾ 1986 c. 44.

TM2574032844, then in a south-south-easterly direction to a point, maintaining 30 metres distant from the western face of the pier at TM2576532713, then in a south-easterly direction to a point at TM2580032661 and then passing by the shortest line to the western quay at the landward end of the pier to a point at TM2580832662 and for the purpose of identification only is shown hatched black on sheet 5 of the deposited plans and sections.

5. Notwithstanding anything in article 3, article 5 or article 7 or shown on the deposited plans and deposited sections, no part of the harbour wall (Work No. 3) or the floating wavescreen (Work No. 4) shall be situated within 46 metres of any point of the Trinity Pier.

6. Notwithstanding anything in article 12 no moorings shall be placed or laid down within 46 metres of the Trinity Pier.

7. The provisions of article 14 and article 15 shall not apply to the Trinity Pier protected area.

8. Except with the consent of Trinity House, which consent shall not be unreasonably withheld—

(a) no works shall be carried out within the Trinity Pier protected area under article 3 or article 5; and

(b) no dredging operations shall be carried out within the Trinity Pier protected area under this Order and no such operations shall be permitted which involve dredging to any depth lower than the inclined plane within that area which is 4.5 metres below Chart Datum at the side of the area nearest to the pier and 8 metres below Chart Datum at the side of the area furthest from the pier.

9. No part of the Trinity Pier shall be acquired by the Company under this Order and the powers of sections 30 to 44 of the Railways Clauses Consolidation Act 1845⁽¹⁹⁾ (as incorporated by section 25 of the 1983 Act and extended by section 14 of the Harwich Parkeston Quay Act 1988⁽²⁰⁾ and article 9) shall not be exercised in relation to the Trinity Pier.

10. Any difference arising between the Company and Trinity House under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration.

PART 3

For protection of Harwich Haven Authority

11. For the protection of the Authority, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Company and the Authority, apply and have effect.

12. In this Part of this Schedule—

“the Authority” means Harwich Haven Authority;

“the Harbour” means Harwich Harbour as described in section 4(1)(a) of the Harwich Harbour Act 1974⁽²¹⁾ (which defines the area of Harwich Harbour);

“the Haven” means the waters over which the Authority exercises jurisdiction as harbour authority;

“plans” includes sections, drawings, descriptions, specifications, programmes and method statements;

“work” means any work authorised by article 3.

⁽¹⁹⁾ 1845 c. 20.

⁽²⁰⁾ 1988 c. xxviii.

⁽²¹⁾ 1974 c.i.

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13. The Company shall provide the Authority's harbour master with details of any operations (including programmes of construction), proposed in connection with the construction of any of the authorised works, which will or may create such conditions in the waters of the Haven that the passage of any vessel navigating outside the limits of deviation may be significantly impeded; and before any such operation commences the Company shall agree with the harbour master any special measures which are to be taken to avoid obstructing vessels navigating in the Haven.

14. The Company shall appoint the Authority to be the Company's agents for the purpose of carrying out all environmental monitoring reasonably required as a result of the construction and operation of the authorised works.

15. The Authority shall keep separate accounts of any expenditure which it incurs in connection with environmental monitoring undertaken by the Authority as the Company's agents pursuant to paragraph 14.

16.—(1) Not less than 56 days before commencing the construction of any tidal work the Company shall supply to the Authority plans of that work—

Provided that in the case of any work to be carried out under article 5, being a work which is required in an emergency, the Company shall not be required to submit plans of that work before its commencement but shall—

- (a) give immediate notice of that work to the Authority; and
- (b) submit plans of that work to the Authority as soon as reasonably practicable after its commencement.

(2) Whenever plans are submitted to the Authority under sub-paragraph (1) the Company shall also submit such further particulars by way of clarification of what is proposed as the Authority may, within 21 days from the day on which the plans are submitted under this paragraph, reasonably require.

(3) The Authority may approve plans submitted to it in accordance with this Part of this Schedule or may disapprove them or approve them subject to conditions and, if the Authority does not within 56 days of the submission to it of—

- (a) plans under sub-paragraph (1); or
- (b) the provision of any information required under sub-paragraph (2);

notify the Company in writing of its approval of those plans (with or without conditions), or its disapproval of those plans, the Authority shall be deemed to have approved the plans.

(4) Tidal works shall not be constructed except in accordance with such plans as may have been approved (with or without conditions) by the Authority under this Part of this Schedule or deemed to have been approved in accordance with sub-paragraph (3) or settled as provided in paragraph 21.

(5) The Company shall give to the Authority not less than 28 days' notice of the commencement of any tidal work.

(6) Plans of a tidal work shall not be submitted by the Company to the Secretary of State for approval under section 11 (tidal works not to be executed without approval of Secretary of State) of the 1983 Act until plans of that work have been approved by the Authority or deemed to have been approved in accordance with sub-paragraph (3) or settled as provided in paragraph 21; and if, on the submission of plans to the Secretary of State, the Secretary of State requires the alteration of the plans of any work so approved or settled, the Company shall, not less than 28 days before commencing the work, notify the Authority of the alteration.

(7) Subject to sub-paragraph (6), if there is any inconsistency between the plans of any tidal work approved or deemed to be approved under this paragraph or settled as provided in paragraph 21 and the plans approved by the Secretary of State under section 11 of the 1983 Act, the work shall be constructed in accordance with the plans approved by the Secretary of State.

(8) The exercise by the Company of the powers of article 6 for the purpose of improving access to and from any work shall not, for the purpose of section 19 (restriction on works, dredging and moorings) of the Harwich Harbour Act 1974, be taken to be specifically authorised by any enactment.

17. The Company shall carry out any tidal work with all reasonable dispatch and to the reasonable satisfaction of the Authority (and shall promptly remove all temporary works as soon as they are no longer required), so that traffic in the Haven does not suffer more interference than is reasonably necessary, and the Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey any tidal work.

18.—(1) If any tidal work is abandoned or falls into decay, the Authority may by notice in writing to the Company require it either to repair and restore the work or any part of it or (if the Company no longer requires the work) to remove the work and restore the site to its former condition to such extent as the Authority reasonably requires.

(2) If a work which consists of a tidal work and a non-tidal work is abandoned or falls into decay and the non-tidal work is in such condition as to interfere with navigational safety, a notice under this paragraph may include the non-tidal work, or any part of it.

(3) In sub-paragraph (2), “non-tidal work” means so much of any authorised work as is on or over land above the level of high water.

(4) If after such reasonable period as may be specified in a notice under this paragraph the steps specified in that notice have not been taken, the Authority may take those steps and the Company shall pay the amount of any expenditure reasonably incurred by the Authority in so doing.

19.—(1) If any berth approach within the Harbour becomes subject to sedimentation, scouring, currents or wave action which is wholly or partly caused by the construction or carrying on of the tidal works (including any temporary works) and which occurs during the period beginning with the commencement of the construction or carrying on of the tidal works and ending with the expiration of five years after the date on which the last of those works is completed or the removal of such temporary works, as the case may be, the Company shall either—

(a) pay to the Authority any additional expense which the Authority may reasonably incur for the preservation of proper maintenance of the berth approach—

(i) in dredging the Harbour to remove the sedimentation;

(ii) in taking such action as the Authority considers to be necessary for the purpose of making good such scouring or the effects of such currents or wave action; or

(iii) as a result of the increased frequency of maintenance dredging; or

(b) take the necessary action at its own cost subject to prior approval of the Authority, such prior approval not to be unreasonably withheld or delayed.

(2) Where dredging is undertaken under sub-paragraph (1) the Company shall pay for or carry out such dredging as may be necessitated by further sedimentation, scouring or wave action occurring within five years after completion of the dredging undertaken under sub-paragraph (1).

20.—(1) The Company shall be responsible for and make good to the Authority all financial losses which may be reasonably incurred or suffered by the Authority by reason of the construction, maintenance or operation of any work or the failure of any work or by reason of any act or omission of the Company, its employees, contractors or agents or others whilst engaged in the construction or maintenance of any work or dealing with any failure of any such work.

(2) The Company shall indemnify the Authority from and against all claims and demands arising out of or in connection with any work or any such failure, act or omission, and the fact that any act or thing may have been done by the Authority on behalf of the Company or by the Company, its employees, contractors or agents with plans or particulars submitted to or modifications or conditions

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specified by the Authority, or in a manner approved by the Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Authority or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this sub-paragraph.

(3) The Authority shall give the Company reasonable notice of any such loss, claim or demand as is referred to in sub-paragraphs (1) and (2), and no settlement or compromise of any such loss, claim or demand shall be made without the prior consent of the Company which shall not be unreasonably withheld.

21. Any difference between the Company and the Authority arising out of any provisions of this Part of this Schedule shall be determined by arbitration.

PART 4

For further protection of authorities in Harwich Harbour

22.—(1) For the further protection of the Felixstowe Dock and Railway Company, Harwich Dock Company Limited and Trinity House the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Company and the protected interests, apply and have effect.

(2) In this Part of this Schedule—

“the protected area” means so much of the river as lies eastward of the map reference line TM 22200 East, so much of the river Orwell as lies southward of the map reference line TM 35000 North and the common estuary of the rivers Stour and Orwell and the navigation approaches to them;

“the protected interests” means all or any one or more of the Felixstowe Dock and Railway Company, Harwich Dock Company Limited and Trinity House;

“the specified works” means any of the authorised works which are tidal works, and includes any operations carried out under the powers of article 6 in execution of the powers of paragraph (3) of article 3.

23.—(1) This paragraph applies during the specified period if, in consequence of the construction of the specified works (including any dredging in connection with the construction, or to afford vessels access to those works), any accumulation of silt or other material, or any scouring or alteration of the tidal flow in the river is caused or created within the protected area.

(2) If the accumulation, scouring or alteration of tidal flow referred to in sub-paragraph (1) causes or creates a relevant concern, the protected interests may, within the specified period, request that the Company carry out such works or take such action to address that relevant concern.

(3) The Company, if so requested by the protected interests under sub-paragraph (2), shall carry out such works or take such action necessary to address that relevant concern, including without prejudice to the generality—

- (a) repairing such damage;
- (b) removing such accumulation of silt or other material; and
- (c) restoring safe navigation and berthing,

within the protected area.

(4) If the Company fails to take the requested steps under sub-paragraph (3), the protected interests may themselves cause the work to be done and may recover from the Company the reasonable cost incurred by them in doing so.

(5) In this paragraph—

“the specified period” means the period—

- (a) during which the specified works on the foreshore or bed of the river are being constructed, ending five years after they have been completed; and
- (b) during which any temporary structures in connection with the specified works are being constructed, ending five years after they have been removed.

“a relevant concern” means—

- (c) damage to the harbour works of the protected interests;
- (d) an impediment to the free navigation of the protected area; or
- (e) prejudices safe navigation or berthing in that area.

24. If any such accumulation, scouring or alteration of the tidal flow arises within the period of five years and is removed or remedied in accordance with paragraph 23, then any recurrence of such accumulation, scouring or alteration of the tidal flow shall from time to time be removed or otherwise remedied in accordance with paragraph 23 during a period of 10 years after the completion of the specified works or the removal of such temporary structures, as the case may be.

25. The Company shall repay or, as the case may be, keep the protected interests indemnified against all damages, losses, costs and expenses which they may directly or indirectly sustain, or be liable for, or reasonably and properly incur, by reason or in consequence of any injury or damage which may be caused or may result to any harbour works or property of the protected interests, or as a result of any interference in the operation thereof, by or in consequence of any such accumulation, scouring or alteration of the tidal flow—

Provided that the protected interests shall give to the Company notice of any claim or demand made against them which, in the opinion of the protected interests is a claim or demand for which the Company may be liable under this paragraph, and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.

26. Any difference arising between the Company and the protected interests under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration.

PART 5

Protection of the Environment Agency

27.—(1) The following provisions of this Part of this Schedule shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material;

“the Agency” means the Environment Agency;

“completion” in relation to a work means the date on which it is brought into use;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“damage” includes scouring and erosion and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment, outfall

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or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or shore of the sea or of the bed or banks of any river;

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

“outfall” means—

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

“plans” includes sections, drawings, specifications and method statements;

“specified work” means any permanent or temporary work or operation authorised by this Order (including any dredging and any exploratory geotechnical investigations that may be undertaken);

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

28.—(1) Before beginning to construct any specified work, the Company shall submit to the Agency for its approval plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if, within 42 days of the submission of the plans for approval, it is neither—
 - (i) given; nor
 - (ii) refused (the refusal being accompanied by a statement of the grounds for refusal in writing); and
- (c) may be given subject to such reasonable conditions as the Agency may impose in the discharge of its environmental and recreational duties for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental and recreational duties.

29. Without prejudice to the generality of paragraph 28 but subject to paragraph 39, the conditions which the Agency may impose under that paragraph include—

- (a) conditions as to the time and the manner in which any work is to be carried out; and
- (b) conditions requiring the Company at its 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 or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) 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.

30.—(1) Subject to sub-paragraph (2)—

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- (a) any specified work, and all protective works required by the Agency under paragraph 28(2)(c), shall be constructed within such period (if any) as the Agency may approve at the time of approval or on an application by the Company thereafter (such approval not to be unreasonably withheld);
- (b) any specified work shall be constructed in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule and in accordance with any conditions imposed under paragraph 28; and
- (c) any protective works required by the Agency under paragraph 28 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.

(2) The Company shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of the completion of any such work not later than 7 days after the date on which it is brought into use.

(3) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Part of this Schedule or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, in the case of removal, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served on the Company, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and may recover any expenditure reasonably incurred by it in so doing from the Company.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

31.—(1) Before commencing the construction of a specified work the Company shall procure at its expense in liaison with and to the reasonable satisfaction of the Agency a survey of any drainage work liable to be affected by that specified work.

(2) Subject to sub-paragraph (3), the Company shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Company or of which it otherwise has control or is in occupation for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(3) The obligation imposed on the Company under sub-paragraph (2) does not apply where the Agency or another person other than the Company is liable to maintain the drainage work in question and is not precluded by the exercise of the powers of this Order from doing so.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Company to repair and restore that drainage work, or any part of it, or (if the Company so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the drainage work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

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(5) If, within a reasonable period being not less than 28 days beginning with the date on which a notice under sub-paragraph (4) is served on the Company, it has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Agency shall not, except in an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

32.—(1) If, during the construction of a specified work or within 10 years after the completion of any such work and wholly or partly in consequence of its construction, there is caused or created an accumulation or erosion which causes damage, the Company shall, if so required by the Agency before or within the period of 10 years after such completion, remedy such accumulation or erosion, in the manner specified in sub-paragraph (4) and, if it refuses or fails so to do, the Agency may itself cause work to be done and may recover the reasonable cost of doing so from the Company.

(2) Should any accumulation or erosion in consequence of such construction arise within the period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the period of 10 years and at any time thereafter, except 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.

(3) In sub-paragraphs (1) and (2) "damage" means any damage to the bed or banks of the river or any adverse effect on the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(22).

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) 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,

any such protective works being subject to paragraph 39.

(5) 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 it is attributable to such construction.

33. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency and if the Company fails to do so within such reasonable period as the Agency may require by notice in writing to the Company, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

34.—(1) The Company shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(22) 1991 c. 57.

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- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve written notice on the Company requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of a notice under sub-paragraph (2), the Company fails to take such steps as are described in that notice, the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in so doing.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

35. The Company shall indemnify the Agency in respect of all reasonable and proper 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 Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

36.—(1) Without prejudice to the other provisions of this Part of this Schedule, the Company shall indemnify the Agency against all claims, demands, proceedings, costs, damages or expenses or losses, which may be made or taken against, or recovered from or incurred by the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, its contractors, agents or employees whilst engaged on the specified works.

(2) The Agency shall give to the Company reasonable notice of any such claim, demand or proceedings and no settlement or compromise of any such claim, demand, proceedings, costs, damages, expenses or losses shall be made without the consent of the Company which shall not be unreasonably withheld.

37. The fact that any work or thing has been executed or done by the Company 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 Part of this Schedule.

38. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall

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be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

39.—(1) This paragraph applies in relation to any protective work required by the Agency under this Part of this Schedule (“relevant protective work”).

(2) Relevant protective works shall be taken to be works which fall within paragraph (ii) of the proviso to section 19 of the Harwich Harbour Act 1974⁽²³⁾ (restrictions on works, dredgings and moorings) and, accordingly, to be exempt from the requirement to be licensed under section 20 of that Act (licensing of works).

(3) Before imposing any requirement of a type referred to in paragraph 29(b)(ii) or 32(4), the Agency shall first consult in writing the Harwich Haven Authority (“the Authority”) who may comment in writing (with or without specifying objections) within 21 days of being consulted; and the Agency shall, within 7 days of receiving any such comments from the Authority, provide the Company with a copy of those comments.

(4) Not less than 56 days before commencing the construction of any relevant protective work the Company or the Agency shall supply to the Authority plans of that work.

(5) Whenever plans are submitted to the Authority under sub-paragraph (4) the Company or the Agency shall also submit such further particulars by way of clarification of what is proposed as the Authority may, within 21 days from the day on which the plans are submitted, reasonably require.

(6) The Authority may approve plans submitted to it under sub-paragraph (4) or may disapprove them or approve them subject to conditions; and, if the Authority does not within 56 days of the submission to it of any plans under sub-paragraph (4) or the provision of any information required under sub-paragraph (5), as the case may be, notify the Agency and the Company in writing of its approval of those plans (conditionally or unconditionally), or its disapproval of those plans, the Authority shall be deemed to have approved the plans.

(7) A relevant protective work shall not be constructed except in accordance with such plans as may have been approved (conditionally or unconditionally) by the Authority under this Part of this Schedule or deemed to have been approved in accordance with sub-paragraph (6) or settled as provided in paragraph 41.

(8) The Company or the Agency shall give to the Authority not less than 28 days’ notice in writing of the commencement of any relevant protective work.

(9) Plans of any relevant protective work which is a tidal work shall not be submitted by the Company to the Secretary of State for approval under section 11 (tidal works not to be executed without approval of Secretary of State) of the 1983 Act until plans of that work have been approved by the Authority or deemed to have been approved in accordance with sub-paragraph (6) or settled as provided in paragraph 41; and if, on the submission of plans to the Secretary of State, the Secretary of State requires the alteration of the plans of any work so approved or settled, the Company shall, not less than 28 days before commencing the work, notify the Authority and the Agency of the alteration.

(10) Subject to sub-paragraph (9), if there is any inconsistency between the plans of any relevant protective work which is a tidal work approved or deemed to have been approved under this paragraph or settled as provided in paragraph 41 and the plans approved by the Secretary of State under section 11 of the 1983 Act, the relevant protective work in question shall be constructed in accordance with the plans approved by the Secretary of State.

40.—(1) In the event that there is any inconsistency between the obligations of the Company arising from this Part of this Schedule and the Deed, the obligations arising under the Deed shall prevail and, accordingly, the Company shall comply only with the obligations arising under the Deed.

(23) 1974 c.i.

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(2) In this paragraph, “the Deed” means the Deed entered into on 15 October 2004 between the Company, the Harwich Haven Authority, the Agency and English Nature relating to Bathside Bay Container Terminal, Little Oakley Managed Realignment and the Conservation (Natural Habitats &c.) Regulations 1994(24).

41. Any dispute arising between the Company and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Harwich International Port Limited (the applicant for the Order) to undertake works at Bathside Bay, Harwich. The authorised works include a container port by extending Parkeston Quay between that quay and the train ferry berth at Harwich.

The works also include the construction of a quay wall including berths for vessels and quayside cranes, the infilling and reclamation of part of the foreshore and bed of Bathside Bay and the provision of a boat harbour.

The Order defines the area of the boat harbour and restricts the use of the boat harbour to pleasure craft and other small vessels.