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STATUTORY INSTRUMENTS

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**201X No.**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Associated British Ports (Port of Immingham Western  
Deepwater Jetty) Harbour Revision Order 201X**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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Associated British Ports has applied to the Marine Management Organisation for a harbour revision order under section 14 of the Harbours Act 1964(a).

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an Order(b) under section 42A(c) delegated the functions of the appropriate Minister under section 14(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

## PART 1

### Preliminary

#### Citation and commencement

1. This Order may be cited as The Associated British Ports (Port of Immingham Western Deepwater Jetty) Harbour Revision Order 201X and comes into force on [                      ].

#### Interpretation

2.—(1) In this Order—

“A.B. Ports” means Associated British Ports;

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

“the 1965 Act” means the Compulsory Purchase Act 1965(g)

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(h);

“the annexed map” means the map annexed to this Order;

“Chart Datum” in relation to any depth of dredging is 3.9 metres below Ordnance Datum (Newlyn) as measured in the Grimsby area of the Humber Estuary;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections prepared in triplicate, signed by [                      ] in the Marine Management Organisation and marked “Plans and Sections referred to in The Associated British Ports (Port of Immingham

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(a) 1964 c.40.

(b) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

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

(e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

(f) 1847 c.27

(g) 1965 c.56.

(h) S.I. 1995/418 to which there have been amendments not relevant to this Order

Western Deepwater Jetty) Harbour Revision Order 201X” one copy of which is deposited at the Marine Management Organisation and the others at the principal office of A.B. Ports and at its office in Grimsby;

“the Dock Master” means the Dock Master of A.B. Ports at Immingham and Grimsby;

“enactment” includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“the level of high water” means the level of mean high water springs;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“reference point” means Ordnance Survey National Grid reference point;

“tidal work” means so much of any of the 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;

“the undertaking” means the undertaking of A.B. Ports as authorised from time to time;

“vessel” means every description of vessel, however propelled or moved, including a hovercraft (within the meaning of the Hovercraft Act 1968)(a), a hydrofoil vessel and anything constructed or used to carry persons or goods by water;

“the site” means the area referred to in article 4(2); and

“the works” means the works authorised by this Order.

(2) Any reference in this Order to a work identified by the number of such work is construed as a reference to the work of that number authorised by this Order.

(3) All directions, distances, points and dimensions stated in any description of works, are construed as if the words “or thereabouts” were inserted after each such direction, distance, point or dimension.

### **Incorporation of general enactments**

**3.**—(1) The 1847 Act, except sections 6 to 23, 25, 31, 48 to 50, 79, 80, 84 to 88, 90, 97 and 98 is incorporated with and forms part of this Order.

(2) For the purposes of construing the Act of 1847, as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expression “the harbour, dock, or pier” means the works;
- (c) the expression “the harbour master” means, in relation to the works, the Dock Master and includes any assistants of the Dock Master;

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(a) 1968 c.59.

(d) for the definition of “vessel” in section 3 of the 1847 Act there is substituted the definition of the word “vessel” contained in article 2(1); and

(e) section 53 of the 1847 Act is not to be construed as requiring the Dock Master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master.

(3) Section 33 of the Act of 1847, as so incorporated, is not to be construed as derogating from the power of A.B. Ports to discontinue any part of the undertaking.

## PART 2

### Works Provisions

#### **Power to make works**

4.—(1) A.B. Ports may, in the lines and situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the following works partly in the district of North Lincolnshire and partly on the bed and foreshore of the river Humber—

#### **Work No. 1**

A piled structure comprising—

a jetty head 80 metres in length between reference points 518257/418676, and 518302/418610 and connected to a series of breasting and mooring dolphins upstream and downstream, extending to the east up to reference point 518302/418610, and to the west up to point 518185/418765.

#### **Work No. 2**

A piled structure comprising—

a secondary jetty head 80 metres in length between reference points 518156/418761, and 518201/418695 and connected to a series of breasting and mooring dolphins upstream and downstream, extending to the east up to reference point 518233/418665 and to the west up to point 518153/418788.

#### **Work No. 3**

A piled structure comprising—

a pier 100 m in length between reference points 518191/418739 and 518259/418640 linking Works 2 and 4.

**Work No. 4**

A piled structure comprising—

an approach jetty connecting Work No.s 1 and 3 to the shore commencing at the main jetty head at reference point 518281/418641 and terminating by a connection with the existing sea defences at reference point 517751/418528.

**Work No. 5**

An overbridge between reference points 517381/418219 and 517496/418343 affording access across the Killingholme Branch Line in order to facilitate unimpeded road access to the site, including a connection with the existing Station Road.

**Work No. 6**

Enhancement of Station Road between reference points 517342/418218 and 517465/418279.

**Work No. 7**

Railway sidings from the main Killingholme Branch Line in to the site with accompanying runaround loop and bulk liquids loadout facility.

**Work No. 8**

Further railway sidings adjacent and connected to the Killingholme Branch Line in connection with the above.

(2) In connection with Work Nos. 1, 2, 3 and 4 A.B. Ports may within the area hatched black on sheet 2 of the deposited plans provide facilities for and in connection with receiving, storing and transport of liquid bulk cargoes comprising up to 5 storage tanks, pipelines, an administration building and associated infrastructure including pumping facilities and utility services.

(3) A.B. Ports may, within the limits of deviation and the land hatched black on sheet 2 of the deposited plans, and from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works.

(4) The works for all purposes form part of the undertaking.

**Power to make subsidiary works**

5. A.B. Ports may from time to time within the limits of deviation erect, construct and maintain all such works, conveniences, appliances and apparatus as they from time to time deem necessary or convenient for the purposes of or in connection with or incidental to, the construction and maintenance of the works or the accommodation of vessels at the works.

### **Power to deviate**

6. In constructing the works A.B. Ports may deviate laterally from the lines or situations shown on the deposited plans and described in article 4 (power to make works) to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to such extent downwards as may be found necessary or convenient.

### **Fine for obstructing works**

7. Any person who intentionally obstructs any person acting under the authority of A.B. Ports in constructing the works or who intentionally or recklessly interferes with equipment or materials used in the construction of the works is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Power to dredge in Humber**

8.—(1) For the purposes of affording uninterrupted means of access to the works and of enabling their use at all states of the tide, A.B. Ports may from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the river Humber—

- (a) within an area adjoining Works No. 1 equal in size to the area stippled blue on sheet 3 of the deposited plans, to a maximum depth of 14.7 metres below Chart Datum (dredged berth pocket);
- (b) within an area adjoining Works No. 2 equal in size to the area stippled blue on sheet 3 of the deposited plans, to a maximum depth of 10 m below Chart Datum (secondary dredged berth pocket);
- (c) within the area stippled red on sheet 3 of the deposited plans, to a maximum depth of 9.2 metres below Chart Datum (dredged approach channel and turning area);

and may (subject to paragraphs (2) and (3)) as it thinks fit use, appropriate or dispose of the materials from time to time taken up or collected by it in the course of any such operations.

(2) No materials referred to in this article are to be deposited below the level of high water otherwise than in such places and in accordance with such restrictions as may be prescribed by the Marine Management Organisation under a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009<sup>(a)</sup>.

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(a) 2009 c.23.

(3) The power to use, appropriate or dispose of materials referred to in this article does not extend to wreck (within the meaning of Part IX of the Merchant Shipping Act 1995)<sup>(a)</sup> found by A.B. Ports.

### **Limits of jurisdiction of Dock Master**

9. The limits within which the powers of the Dock Master in relation to the works may be exercised under and subject to the provisions of the 1847 Act, as incorporated with this Order, extends to a distance of 200 metres in every direction from those works.

### **Application of byelaws of A.B. Ports**

10.—(1) The Immingham Dock Byelaws 1929, subject to paragraph (2), apply in relation to the works, and nothing in this Order affects the right of A.B. Ports to enforce the byelaws or to amend or revoke them.

(2) In the Immingham Dock Byelaws 1929 as applied by paragraph (1), references to “the prescribed limits” are to be construed as references to the limits within which the powers of the Dock Master may be exercised under article 9 (limits of jurisdiction of Dock Master).

(3) In this article the Immingham Dock Byelaws 1929 means the byelaws made by the London and North East Railway Company on 1<sup>st</sup> January 1929 and confirmed by the Minister of Transport on 4<sup>th</sup> January 1929.

### **Works to be within the district of North Lincolnshire**

11. So much of the works as are beyond low water are deemed to be within—

- (a) the district of North Lincolnshire;
- (b) the parish of South Killingholme;
- (c) the local justice area of Grimsby and Cleethorpes.

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

12.—(1) Unless construction has commenced within five years of the coming into force of the Order a tidal work must not be constructed, altered, enlarged, replaced, relaid, extended or reconstructed 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, altered, enlarged, replaced, relaid, extended or reconstructed in contravention of this article or of any condition or restriction imposed under this article—

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(a) 1995 c.21.



- (a) the Secretary of State may by notice in writing require A.B. Ports at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition and, if on the expiration of 30 days from the date when the notice is served upon A.B. Ports it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in doing so is recoverable from A.B. Ports.

### **Provision against danger to navigation**

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

(2) If A.B. Ports fails to notify Trinity House as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

14.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require A.B. Ports at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site 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 suffered to fall 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 paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) is served upon A.B. Ports, it has 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 doing so is recoverable from A.B. Ports.

### **Survey of tidal works**

15. The Secretary of State may at any time, if the Secretary of State deems it expedient, 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 any such survey and examination is recoverable from A.B. Ports.

### **Permanent lights on tidal works**

16.—(1) After the completion of a tidal work A.B. Ports must at the outer extremity of that work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Lights on tidal works during construction**

17.—(1) A.B. Ports must at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension 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 may from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Defence of due diligence**

18.—(1) In proceedings for an offence under article 13, 16 or 17 it is a defence for A.B Ports to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) 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, A.B Ports is not, without leave of the court, to be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has 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 its possession.

## PART 3

### Acquisition of Land

#### **Power to acquire land**

19. A.B. Ports may acquire compulsorily so much of the land shown hatched black on the annexed map and described in Schedule 1 to this Order as may be required for or in connection with the works and may use any land so acquired for those purposes or for any other purposes connected with its undertaking.

#### **Application of Part 1 of the 1965 Act**

20.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(a) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied, has effect as if

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days notice) for the reference to 14 days notice there were substituted a reference to notice of 3 months

#### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

21.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

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(a) 1981 c. 67.

(b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are construed as references to that Act as applied to the acquisition of land under article 19 (power to acquire land).

### **Disregard of certain interests and improvements**

**22.** In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

(a) any interest in land;

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

### **Extinction or suspension of private rights of way**

**23.—**(1) Subject to paragraph (6), all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by A.B. Ports, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by A.B. Ports under section 11(1) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraphs (4) and (5) all private rights of way over land of which A.B. Ports takes temporary possession under this Order are suspended and unenforceable for as long as A.B. Ports remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.), paragraph 2 of Schedule 11 (provisions relating to statutory undertakers etc.) or paragraph 18(3) or 55(7) of Schedule 12 (protective provisions) applies.

(5) Paragraphs (1) has effect subject to—

(a) any notice given by A.B. Ports before—

- (i) completion of the acquisition of; or
- (ii) A.B. Ports's entry onto;

the land, that that paragraph does not apply to any right of way specified in the notice; and

(b) any agreement which makes reference to this article made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) between A.B. Ports and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is mentioned in sub-paragraph (5)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

#### **Time limit for exercise of powers of acquisition**

**24.** After the end of the period of 5 years beginning on the day on which the Order comes into force no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 20 (application of part 1 of the 1965 Act).

## Miscellaneous and General

### **Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010**

**25.**—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(a) (“the Habitats Regulations”) does not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) 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 works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 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.

### **Statutory undertakers etc.**

**26.** The provisions of Schedule 2 (provisions relating to statutory undertakers etc.) have effect.

### **Protection of interests**

**27.** The provisions of Schedule 3 (protective provisions) have effect.

### **Saving for Trinity House**

**28.** Nothing in this Order prejudices or derogates from any of the rights or privileges of Trinity House.

### **Restrictions on permitted development rights**

**29.** Schedule 4 to this Order has effect.

### **No double recovery**

**30.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

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(a) S.I. 2010/490.

(b) S.I. 1995/418 to which there have been amendments not relevant to the Order.

**Saving for Crown Rights**

**31.**—(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 A.B. Ports 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 under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

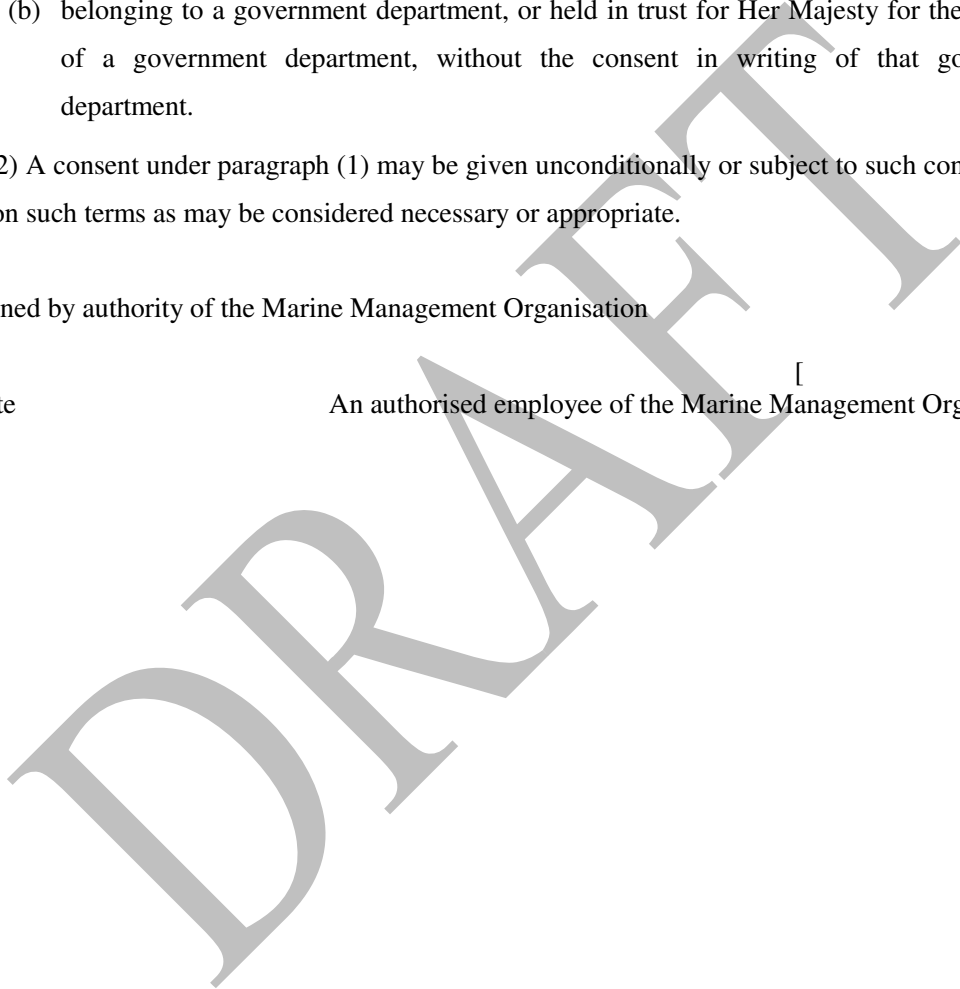
Signed by authority of the Marine Management Organisation

*Name*

[ ]

Date

An authorised employee of the Marine Management Organisation



## SCHEDULES

### SCHEDULE 1

Article 19

#### DESCRIPTION OF LAND SUBJECT TO COMPULSORY PURCHASE

(1) <i>Number on amended map</i>	(2) <i>Extent and description of land</i>	(3) <i>Owner, lessor or occupier</i>
1	Land comprising of private road, verges and hardstanding totalling approximately 330 square metres in extent.	<p>Able Humber Ports Ltd. Ogier House The Esplanade St. Helier Jersey JE4 9WG</p> <p>Mr. Danny Revill (in respect of right of access) The Lookout Station Road South Killingholme DN40 3ED</p> <p>Ms. Gillian Harper (in respect of right of access) North Low Lighthouse Station Road South Killingholme DN40 3ED</p> <p>The Secretary of State for Defence on account of his responsibility for the Government Pipeline and Storage System, managed on his behalf by the Oil and Pipelines Agency (in respect of right of access) c/o Fisher German Chartered Surveyors The Grange 80 Tamworth Road Ashby de la Zouch LE65 2BY</p> <p>Able Humber Ports Ltd. (in respect of right of access) Ogier House The Esplanade St. Helier Jersey</p>



		JE4 9WG
2	Part of land comprising of private road (Station Road), grass verges, hedgerows, drain and hardstanding thereof totalling approximately 853 square metres in extent.	<p>Bethany Jayne Ltd. Links House Estate Road No. 2 Pyewipe Industrial Estate Grimsby North East Lincolnshire DN31 2TG</p> <p>Mr. Danny Revill (in respect of right of access) The Lookout Station Road South Killingholme DN40 3ED</p> <p>Ms. Gillian Harper (in respect of right of access) North Low Lighthouse Station Road South Killingholme DN40 3ED</p> <p>The Secretary of State for Defence on account of his responsibility for the Government Pipeline and Storage System, managed on his behalf by the Oil and Pipelines Agency (in respect of right of access) c/o Fisher German Chartered Surveyors The Grange 80 Tamworth Road Ashby de la Zouch LE65 2BY</p> <p>Able Humber Ports Ltd. (in respect of right of access) Ogier House The Esplanade St. Helier Jersey JE4 9WG</p>
3	Part of land comprising of grass verges and grassland, totalling approximately 202 square metres in extent.	<p>Able Humber Ports Ltd. Ogier House The Esplanade St. Helier Jersey JE4 9WG</p> <p>Mr. Danny Revill (in respect</p>

		<p>of right of access) The Lookout Station Road South Killingholme DN40 3ED</p> <p>Ms. Gillian Harper (in respect of right of access) North Low Lighthouse Station Road South Killingholme DN40 3ED</p>
4	<p>Part of land comprising of private road (Station Road), grass verges, hedgerows, drain and hardstanding thereof totalling approximately 793 square metres in extent.</p>	<p>Bethany Jayne Ltd. Links House Estate Road No. 2 Pyewipe Industrial Estate Grimsby North East Lincolnshire DN31 2TG</p> <p>Mr. Danny Revill (in respect of right of access) The Lookout Station Road South Killingholme DN40 3ED</p> <p>Ms. Gillian Harper (in respect of right of access) North Low Lighthouse Station Road South Killingholme DN40 3ED</p> <p>The Secretary of State for Defence on account of his responsibility for the Government Pipeline and Storage System, managed on his behalf by the Oil and Pipelines Agency (in respect of right of access) c/o Fisher German Chartered Surveyors The Grange 80 Tamworth Road Ashby de la Zouch LE65 2BY</p> <p>Able Humber Ports Ltd. (in respect of right of access) Ogier House The Esplanade St. Helier</p>

		Jersey JE4 9WG
5	Part of land comprising of railway, track bed and associated structures, level crossing, private road, verges and hardstanding thereof totalling 226 square metres in extent.	<p>Network Rail Infrastructure Ltd. Kings Place 90, York Way London N1 9AG</p> <p>Mr. Danny Reville (in respect of right of access) The Lookout Station Road South Killingholme DN40 3ED</p> <p>Ms. Gillian Harper (in respect of right of access) North Low Lighthouse Station Road South Killingholme DN40 3ED</p> <p>The Secretary of State for Defence on account of his responsibility for the Government Pipeline and Storage System, managed on his behalf by the Oil and Pipelines Agency (in respect of right of access) c/o Fisher German Chartered Surveyors The Grange 80 Tamworth Road Ashby de la Zouch LE65 2BY</p> <p>Able Humber Ports Ltd. (in respect of right of access) Ogier House The Esplanade St. Helier Jersey JE4 9WG</p>

## PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

*Apparatus of statutory undertakers etc. on land acquired*

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by A.B. Ports under this Order subject to the following provisions of this paragraph: and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from A.B. Ports compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from A.B. Ports compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(6) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(b).

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(a) 2003 c. 21.

(b) 1980 c. 66.

## PROTECTIVE PROVISIONS

## PART 1

## PROTECTION FOR NETWORK RAIL

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between A.B. Ports and Network Rail and, in the case of paragraph 13, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(a);

“Network Rail” includes any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006)(b) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used for the benefit of Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions and is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

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(a) 1993 c. 43.

(b) 2006 c. 46.

- (a) co-operate with A.B. Ports with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

**4.—**(1) A.B. Ports must not exercise the powers conferred section 11(3) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981(a) as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) A.B. Ports must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) A.B. Ports must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 2 (provisions relating to statutory undertakers etc.), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) A.B. Ports must not under the powers conferred by this Order acquire or use or acquire new rights over, or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

**5.—**(1) A.B. Ports must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under paragraph 16.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to A.B. Ports that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property, then if A.B. Ports desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of A.B. Ports in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail but at the expense of A.B. Ports, or if Network Rail so desires such protective works must be carried out by A.B. Ports at its own expense without unnecessary delay and A.B. Ports must not commence the construction of the specified works until the engineer has notified A.B. Ports that the protective works have been completed to the engineer's reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;

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(a) 1981 c. 66.

- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it or the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, A.B. Ports must, regardless of any approval described in paragraph 6(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on A.B. Ports with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
- (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of A.B. Ports or its servants, contractors or agents.

**7.** A.B. Ports must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail must at all times afford reasonable facilities to A.B. Ports and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply A.B. Ports with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.**—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to A.B. Ports reasonable notice of its intention to carry out such alterations and additions, A.B. Ports must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by A.B. Ports, Network Rail gives notice to A.B. Ports that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if A.B. Ports desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and A.B. Ports must, regardless of any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by A.B. Ports to Network Rail under this paragraph.

**10.** A.B. Ports must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of A.B. Ports as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph

- 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by A.B. Ports and the supervision by the engineer of the construction of a specified work;
  - (c) in respect of the employment or procurement of the services of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and
  - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

**11.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to A.B. Ports informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, A.B. Ports must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**12.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to A.B. Ports, are to be repaid by A.B. Ports to Network Rail.

**13.—(1)** A.B. Ports must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject to article 30 (no double recovery) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of such a work; or
- (b) by reason of any act or omission of A.B. Ports or of any person in its employ or of its contractors or others whilst engaged upon a specific work,

and A.B. Ports must indemnify Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of A.B. Ports or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse A.B. Ports from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give A.B. Ports reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of A.B. Ports.

(3) The sums payable by A.B. Ports under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any such sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs will, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that train operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of



Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**14.** Network Rail must, on receipt of a request from A.B. Ports, from time to time provide A.B. Ports free of charge with written estimates of the costs, charges, expenses and other liabilities for which A.B. Ports is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 13) and with such information as may reasonably enable A.B. Ports to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**15.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by A.B. Ports under this Part of this Schedule or increasing the sums so payable.

**16.** Any difference arising between A.B. Ports and Network Rail under this Part of this Schedule is to be referred to and settled by a single arbitrator appointed by agreement between the parties, on a reference by either party after notice in writing to the other or, in default of agreement, by the President of the Institution of Civil Engineers.

## PART 2

### For protection of Environment Agency

**17.—(1)** The following provisions apply for the protection of the Environment Agency (“the Agency”) unless otherwise agreed in writing between A. B. Ports and the Agency.

**18.** In this article “the specified work” means the connection of Work No. 4 with the existing shore.

**19.** Not less than 28 days before commencing construction of the specified work A. B. Ports must submit to the Agency plans of that work for its consideration.

**20.** The specified work must be constructed materially in accordance with the plan submitted under paragraph 19 subject to such modifications as may reasonably be required by the Agency to secure that the efficiency of the existing harbour wall for flood defence purposes is not impaired.

**21.** In operating and maintaining the specified work and the area adjoining that work A.B. Ports must secure that the Agency is able to obtain from time to time such access as it may reasonably require for the purpose of maintaining the flood defence capacity of the existing shore while not unreasonably interfering with the operation of the works by A. B. Ports.

**22.** Any difference arising between A.B. Ports and the Agency under this Part of this Schedule is to be referred to and settled by a single arbitrator appointed by agreement between the parties, on a reference by either party after notice in writing to the other or, in default of agreement, by the President of the Institution of Civil Engineers.

## RESTRICTIONS ON PERMITTED DEVELOPMENT RIGHTS

*Time limits*

**23.**—(1) In their application to the works article 3 of, and Part 11 of Schedule 2 to, the 1995 Order (which permit development authorised by a harbour revision order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out) has effect as if the planning permission granted by that Order were limited to such of the works as are substantially commenced within ten years from the coming into force of this Order, or such extended period as the Secretary of State may, on the application of A.B. Ports before the end of that ten year period, allow.

(2) Nothing in paragraph (1) above affects the carrying out of any development which consists of any reconstruction, renewal, alteration, replacement or relaying of the works.

*Planning restrictions*

**24.**—(1) In their application, respectively, to—

- (a) development authorised by this Order, and
- (b) development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order,

article 3 of, and Parts 11 and 17 of Schedule 2 to the 1995 Order have effect as if the authority to develop given thereunder were subject to the restrictions contained in paragraph 25 below.

(2) For the purpose of the Town and Country Planning 1990<sup>(a)</sup> the restrictions contained in paragraph 25 and 26 below are deemed to be conditions imposed on the grant of planning permission.

**25.** In constructing the works A.B. Ports will:

- (a) comply with the Environment Agency's pollution prevention guidelines for working on construction sites;
- (b) use best practice methods of working wherever practicable; and
- (c) ensure that environmental management and awareness training is provided to all construction staff prior to the commencement of the works on site.

**26.** The storage tanks authorised by article 4(2) are to have a maximum storage capacity of 300,000 cubic metres and a maximum height of 30 metres.

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(a) 1990 c.8.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises A.B. Ports to construct and maintain new riverside facilities on the River Humber at Immingham, and confers ancillary powers in connection with the works including powers for dredging and for extending the limits of jurisdiction of the Dock Master.

The deposited plan and sections defined in article 2 of the Order may be inspected during normal hours at the offices of A.B. Ports at Aldwych House, 71 – 91 Aldwych, London WC2B 4HN.

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**201X No.**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Associated British Ports (Port of Immingham Western  
Deepwater Jetty) Harbour Revision Order 201X

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WINCKWORTH SHERWOOD LLP  
5 Montague Close  
London SE1 9BB  
Solicitors and Parliamentary Agents