
 S T A T U T O R Y I N S T R U M E N T S

2018 No. [X]

HARBOURS, DOCKS, PIERS AND FERRIES

The Fishguard Harbour Revision Order 201[X]

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - ***

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The Fishguard and Rosslare Railways and Harbours Company has applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part 1), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12; and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedule 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

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

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

Citation and commencement

1. This Order may be cited as the Fishguard Harbour Revision Order 201[X] and will come into force on [] 201[X].

Interpretation

2.—(1) In this Order, except where the context otherwise requires —

“the Company” means the Fishguard and Rosslare Railways and Harbours Company;

“the deposited plans and sections” means the plans and sections which are bound together and prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “The Fishguard Harbour Revision Order 201[X] Plans and Sections” of which one copy has deposited at the offices of the Marine Management Organisation and the other at the offices of Fishguard Port, Fishguard Harbour, Goodwick, Pembrokeshire SA64 0BU and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans and sections;

“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;

“the harbour” means Fishguard harbour as described in section 3 of the Fishguard and Rosslare Railways and Harbours Act 1914 and including any works which are deemed to form part of the harbour by any subsequent enactment;

“works” means the works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 3 (power to construct works) or article 5 (subsidiary works).

(2) All areas, directions, distances, lengths, widths, heights and grid references as stated in any description of works, powers or lands other than article 4 (power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width, height and grid reference and any reference in a description of works to a point shall be a reference to that point on the deposited plans.

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

Power to construct works

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

(a) S.I. 2010/674.

(b) 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).

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

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

Work No. 1 – The reclamation and infilling of an area of the seabed of the harbour and the levelling of that area together with the levelling of the adjoining land to form an area of 1200 square metres and providing access to Work No.2 having rock armoured revetted slopes on the seaward side, the location of which is shown on sheet [X] and a section of which is shown on sheet [X].

Work No. 2 – A mechanically operated single deck linkspan, providing access to and from vessels, extending from the reclaimed area comprising Work No.1, including supporting piled bankseat and lifting frame and supporting dolphin structures, the location of which is shown on sheet [X] and a section of which is shown on sheet [X].

(2) Subject to the provisions of this Order, the Company may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and enclose and reclaim so much of the bed of the harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking of the Company; and so much of the bed of the harbour and of the foreshore as may be reclaimed shall be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning Act 1991(a).

(3) Without affecting the general power conferred under paragraph (2), the Company may in connection with the construction of the works on any land owned by it, demolish and remove so much of the existing linkspan structure and open piled concrete deck approach structure as may be considered necessary or expedient.

(4) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works authorised by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

Power to deviate

4. Subject to the provisions of this Order, in carrying out the works authorised by article 3 (power to construct works) the Company may deviate laterally from the lines or situations of those works as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as 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.

Subsidiary works

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

(2) Without prejudice to paragraph (1) the 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 or for the loading and unloading of goods and the embarking and loading of passengers; and

(a) 1977 c. 8.

- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations, electrical lines and telecommunications apparatus.

Power to dredge

6.—(1) Without affecting any other powers which may be exercisable by the Company within the harbour the Company may, for the purposes of constructing and maintaining the works and of affording access to the works by vessels from time to time deepen, dredge, scour, blast rock, cleanse, alter and improve the bed, shores and channels of the sea as lie within the limits of the harbour and may use, appropriate or dispose of the materials (other than wreck within the meaning of Section 255 (interpretation) of the Merchant Shipping Act 1995(a)), from time to time dredged by them.

(2) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Obstruction of works

7. Any person who—

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

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale and shall in addition be liable to repay to the Company as a debt any expenses incurred by it in making good any damage resulting from such obstruction, moving or removal.

Survey of tidal works

8. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by them in such a survey and examination shall be recoverable from the Company.

Provision against danger to navigation

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

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

Abatement of works abandoned or decayed

10.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Company 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 thereof to its former condition, to such an extent and within such limits as the Secretary of State think proper.

(2) Where a work authorised by this Order and 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

(a) 1995 c. 21.

that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion of it, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company 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 him in so doing shall be recoverable from the Company.

Lights on tidal works during construction

11.—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

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

Permanent lights on tidal works

12.—(1) After completion of a tidal work the Company shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

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

Period for completion of works

13.—(1) Subject to paragraph (2), if the works are not substantially 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 by this Order granted to the Company for making and maintaining the works shall cease except as to so much of those works as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (4) of article 3 (power to construct works) or article 5 (subsidiary works).

Works to be deemed part of harbour

14. The works shall be deemed for all purposes to be part of the harbour and all the enactments relating to the harbour, and the byelaws, directions, rules and regulations of the Company for the time being in force relating to the harbour, shall (so far as they are applicable and are not inconsistent with or varied by the this Order) apply to the works and may be enforced by the Company accordingly.

Works to be within area of Pembrokeshire Council

15. The works shall, to the extent that they lie outwith the area of the Pembrokeshire Council, be annexed to and incorporated within that area.

Status of reclaimed land

16. Any land reclaimed forming part of Work No.1 will be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning Act 1990(a).

Agreements between the Company and Stena Line Ports Limited

17.—(1) The Company and Stena Line Ports Limited may enter into and carry out agreements as to the construction, ownership, maintenance and operation of the works and as to any matters incidental to, or consequential on, those matters.

(2) Any such agreement may provide (amongst other matters) for the exercise by Stena Line Ports Limited of all or any of the powers of the Company in connection with the works (other than powers mentioned in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 1 to the Harbours Act 1964(b)) subject to the same provisions as would apply if those powers were exercised by the Company.

(3) This article does not affect the Agreement dated 27 May 1898 made between the Company of the first part the Great Western Railway Company of the Second part and the Great Southern and Western Railway Company of the third part (which agreement is set out in Schedule 7 to the Fishguard and Rosslare Railways and Harbours Act 1899(c)).

Defence of due diligence

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

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

article 9 (provision against danger to navigation);

article 11 (lights on tidal works during construction); and

article 12 (permanent lights on tidal works).

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Saving for Trinity House

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

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 that generality, nothing in this Order authorises the Company to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(a) 1990 c.8.
(b) 1964 c. 40.
(c) 1899 c. clxxxvi.

- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
 - (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

Signed by authority of the Marine Management Organisation

	<i>Name</i>
	Chief Executive Officer
Date	An authorised employee of the Marine Management Organisation

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Fishguard and Rosslare Railways and Harbours Company to construct and maintain works at Fishguard harbour in the County of Pembrokeshire.

The principal works comprise the reclamation of land and the construction of a linkspan which will replace existing ferry facilities at the harbour.

A full assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen.

201[X] No.

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