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STATUTORY INSTRUMENTS

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**2002 No. 2618**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Felixstowe Dock and Railway  
Harbour Revision Order 2002

*Made* - - - - - *10th October 2002*

*Coming into force* - - - - - *31st October 2002*

Whereas the Felixstowe Dock and Railway Company have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas the Secretary of State having, in pursuance of paragraph 4 of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex IV to the Directive;

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

And whereas there was an objection made to the application which was not withdrawn, and an inquiry was held in accordance with paragraph 18 of Schedule 3 to the Harbours Act 1964;

And whereas the Secretary of State has considered the information supplied under paragraph 4 of Schedule 3, the objections made and not withdrawn and the report of the person holding the inquiry, and is satisfied as mentioned in section 14(2)(b) of the said Act;

Now, therefore, the Secretary of State for Transport, Local Government and the Regions (being the appropriate Minister under subsection (1) of the said section 14(4)) in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:—

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(1) 1964 c. 40; section 16 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) Schedule 3 was substituted by S.I.1999/3445 as amended by S.I. 2000/2391.  
(3) OJNo. L175, 5.7.85, p. 40.  
(4) For the definition of “the Minister” (mentioned in section 14) see section 57(1).  
(5) S.I. 1981/238, S.I. 1997/2971 and S.I. 2001/2568.

### **Citation and commencement**

1.—(1) This Order may be cited as the Felixstowe Dock and Railway Harbour Revision Order 2002 and shall come into force on 31st October 2002.

(2) The Felixstowe Dock and Railway Acts 1879 to 1988 and this Order may be cited together as the Felixstowe Dock and Railway Acts and Order 1879 to 2002.

### **Interpretation**

2.—(1) In this Order:

“the 1988 Act” means the Felixstowe Dock and Railway Act 1988(6);

“the Company” means the Felixstowe Dock and Railway Company;

“deposited plans” and “deposited sections” mean respectively the plans and sections (numbered sheets 1, 2 and 3) prepared in duplicate, signed by the Head of Ports Division in the Department for Transport and marked “The Felixstowe Dock and Railway Harbour Revision Order 2002” of which copies are deposited at the offices of the Secretary of State for the Environment, Transport and the Regions and the registered office of the Company;

“dock” means the dock constructed by the Company in pursuance of the powers conferred on them by the Felixstowe Dock and Railway Acts 1879 to 1988 and includes the open cut or channel also constructed under those powers, all other works, land, buildings, ancillary works, plant, property and conveniences connected therewith, as from time to time existing;

“Harwich Haven Authority” has the meaning assigned by the Harwich Harbour Acts and Orders 1973 to 2000;

“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 river” means the river Orwell;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“work” means any work authorised by article 4 of this Order, and any works constructed under article 6 of this Order for or in connection with or subsidiary to any of those works and includes those works as reconstructed, extended, enlarged, replaced or relaid under paragraph (2) of the said article 4.

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

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

### **Limits of dock**

3.—(1) The limits of the dock within which the Company shall exercise jurisdiction shall be the area described in Schedule 1 to this Order and notwithstanding anything contained in the Felixstowe Dock and Railway Acts 1879 to 1988, references in any of those Acts or in any byelaws, orders or regulations made under those Acts to the limits of the dock shall be construed as references to the limits so described.

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(6) 1988 c. xiv.

(2) The area described in paragraph (1) above is, for the purpose of identification only, shown edged red on sheet 3 of the deposited plans.

(3) Subsection (1) of section 3 (Limits of dock) of, and the Schedule to, the 1988 Act are hereby repealed.

#### **Power to construct works**

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

A quay, including berths for vessels and a container storage and handling park, enclosing an area of 7.27 hectares extending into the estuary of the river from the north-east bank of the estuary and being an extension in a north-westerly direction of the work as so described and authorised by the 1988 Act to the extent constructed, commencing at the north-western limit of that work as constructed and shown on the deposited plans and described thereon as “Limit of deviation and line of commencement of work” and terminating on a line shown on the deposited plans and described thereon as “Line of termination of work” between reference point TM2557834830, TM2564334930, TM2566434916 and TM2576135045.

(2) Subject to the provisions of this Order, the Company may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the work and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

(3) The Company may, by means of the work authorised by subsection (1) above, enclose and reclaim so much of the bed of the sea and of the river and of the foreshore adjacent to the dock as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(4) The work shall for all purposes form part of the undertaking of the Company as from time to time existing.

#### **Power to deviate**

5. In the construction of the work the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the work shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

#### **Subsidiary works**

6. Subject to the provisions of this Order, the Company may from time to time within the limits of deviation make such trial boreholes or erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance or use of the work.

#### **Period for completion of work**

7. If the work is 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 by this Order granted to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

### **Power to dredge**

**8.**—(1) The Company may, for the purposes of constructing and maintaining the work and of affording access to the work by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the river as adjoin or are near to the work and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(7)), from time to time dredged by them.

(2) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) 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.

(3) The Company shall consult with Harwich Haven Authority before exercising the powers conferred on them by this article.

### **Obstruction of work**

**9.** Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the work, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**10.**—(1) A tidal work shall not be constructed, reconstructed, extended, enlarged, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) Any request for the approval of the Secretary of State under paragraph (1) shall show how Schedule 2 has been complied with as respects the tidal works for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) above or of any condition or restriction imposed under the said paragraph—

- (a) the Secretary of State may by notice in writing require the Company 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 the Company they have failed to take reasonable steps to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, 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 so doing shall be recoverable from the Company.

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

**11.**—(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, extension, enlargement, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

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(7) 1995 c. 21, see section 255(1).

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

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

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

(2) If the Company fail to notify Trinity House as required by paragraph (1) above or to comply with any requirement of a direction given under the said paragraph they shall be 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**

**13.—**(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 their own expense either to repair and restore the work or any part thereof, 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 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 thereof, 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, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company.

#### **Survey of tidal works**

**14.** If the Secretary of State deems it expedient to do so, the Secretary of State may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Company.

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

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

(2) If the Company fail to comply in any respect with a direction given under paragraph (1) above 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.

#### **Amendment of section 28 of Harwich Harbour Act 1974**

16. Section 28(1) (For protection of Felixstowe Dock and Railway Company) of the Harwich Harbour Act 1974<sup>(8)</sup> is amended by the substitution, for the words “section 3 (Limits of dock) of, and the Schedule to, the Felixstowe Dock and Railway Act 1988”, of the words “article 3 (Limits of dock) of, and Schedule 1 to, the Felixstowe Dock and Railway Harbour Revision Order 2002”.

#### **Disapplication of Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994**

17. Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(9)</sup> shall not apply to any planning permission which relates to the development authorised by this Order and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995<sup>(10)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

#### **Defence of due diligence**

18.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2) below 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) above are—

- (a) article 11;
- (b) article 12; and
- (c) article 15.

(3) If in any case the defence provided by paragraph (1) above 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 seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

#### **Protection for Harwich Haven Authority**

19. Subject to Article 10, Schedule 2 (Protection for Harwich Haven Authority) shall have effect.

#### **Saving for Trinity House**

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

#### **Crown rights**

21.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Company 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)—

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<sup>(8)</sup> 1974 c. i.

<sup>(9)</sup> S.I. 1994/2716.

<sup>(10)</sup> S.I. 1995/418.

- (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) above may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State for Transport, Local Government and the Regions.

10th October 2002

*David Jamieson*  
Parliamentary Under-Secretary of State,  
Department for Transport

## SCHEDULE 1

Article 3

**Limits of Dock**

An area bounded by an imaginary line commencing at a point(1) at TM2823931915, thence in a northerly direction along the level of mean low-water springs to a point(2) at TM2826032015, thence along the fence marking the north and north-east boundaries of Landguard Fort to a point(3) at TM2842331967, thence in a straight line in a north-north-easterly direction to a point(4) at TM2842331983, thence in a straight line in a north-easterly direction to a point(5) at TM2856432083, thence in a straight line in an east-north-easterly direction to a point(6) at TM2866832104, thence in a straight line in a north-north-easterly direction to a point(7) at TM2870332217, thence in a north-easterly direction following the line of Landguard Road to a point(8) at TM2875932324, thence in a straight line in a north-north-easterly direction to a point(9) at TM2886832735, thence in a straight line in a north-easterly direction to a point(10) at TM2891032814, thence in a straight line in a northerly direction to a point(11) at TM2891032945, thence in a straight line in a north-easterly direction to a point(12) at TM2896332970, thence following the curve of Carr Road to a point(13) at TM2884432942, thence in a straight line in an easterly direction to a point(14) at TM2890032943, thence in a straight line in a southerly direction to a point(15) at TM2890032824, thence in a straight line in a west-south-westerly direction to a point(16) at TM2866232734, thence in a straight line in a north-westerly direction to a point(17) at TM2859032810, thence in a straight line in a west-north-westerly direction to a point(18) at TM2857632831, thence in a northerly direction to the northside boundary of Carr Road to a point east of the railway crossing(19) at TM2860132915, thence in a westerly direction along the northern boundary of the said Carr Road to a point(20) at TM2858232914, thence in a northerly direction across the railway line to a point on the northern boundary fence of that railway(21) at TM2869733047, thence in an easterly and thereafter a north-north-easterly direction along the northern and north-western boundary fence of that railway to a point(22) at TM2908433355, thence in a north-westerly direction along the centre line of a drain to a point(23) at TM2905033385, thence in a south-westerly direction along the centre line of a drain and thence along the foot of the bank marking the boundary of the outfall works of the Suffolk Coastal District Council to a point(24) at TM2873133145, thence in a north-easterly direction along the foot of the said bank to a point(25) at TM2884533286, thence in a south-easterly direction to a point(26) at TM2890633233, thence following the fence line to a point(27) at TM2902033371, thence in a north-easterly direction along the western boundary of the Suffolk Coastal District Council's road affording access to their outfall works to a point on the southern boundary of Walton Avenue(28) at TM2912733557, thence in a north-westerly direction along the southern boundary of Walton Avenue continuing in a straight line until reaching the Dooley Roundabout, thence following the western outer perimeter of the Roundabout, thence continuing in a north-westerly direction on the southern boundary of Fagbury Road to a point(29) at TM2768234310, thence in a north-westerly direction along the centre line of the drain until it meets the fence line of the branch line to a point(30) at TM2747534521, thence in a north-easterly direction following the fence line until it meets the main line at point(31) at TM2830735924, thence in a north-westerly direction to the fence line west of the branch line at a point(32) at TM2822335995, thence in a south-westerly direction following the fence line to a point(33) at TM2740034575, thence in a straight line in a west-north-westerly direction to the point where the footpath along the top of the sea wall joins the roadway or track to a point(34) at TM2737634581, thence in a west-south-westerly direction along the south-eastern boundary of a road or track to a point(35) at TM2730034526, thence continuing in a south-westerly direction to a point(36) at TM2728534520, thence in a north-westerly direction on the seaward side of the bridle path situated at the base of Fagbury Cliff to a point(37) at TM2680034700, thence in a northerly direction to a point(38) at TM2680034800, thence in a north-easterly direction to a point(39) at TM2690034900, thence in a north-westerly direction to a point(40) at TM2610035500, thence in a south-westerly direction to a point(41) at TM2576135045, thence continuing in a north-westerly direction following the floodwall to a point(42) at TM2568435111, thence continuing in a south-



westerly direction to a point(43) at TM2549834822, thence continuing in a south-easterly direction to a point(44) at TM2579134632, thence following a line 50 metres riverward from the line of the existing quay face in a south-easterly direction to a point(45) at TM2646634200, thence continuing in a south-easterly direction to a point(46) at TM2733033410, thence continuing in a south-easterly direction to a point(47) at TM2792032820, thence in a south-south-easterly direction to a point(48) at TM2808032460, thence in a southerly direction to a point(49) at TM2812031910, thence in an easterly direction to and terminating at the point of commencement.

## SCHEDULE 2

Article 19

### **Protection for Harwich Haven Authority**

1. The provisions of this Schedule shall have effect for the protection of the Authority unless it is otherwise agreed in writing between the Company and the Authority.

2. In this Schedule:—

“Authority” means Harwich Haven Authority;

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

3.—(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.

(2) The Authority may approve plans submitted to it in accordance with this Schedule or may disapprove them or approve them conditionally and, if the Authority does not within 56 days of the submission to it of any plans notify 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.

(3) The works shall not be constructed except in accordance with such plans as may have been approved (conditionally or unconditionally) by the Authority under this Schedule or deemed to have been approved in accordance with paragraph (2) or, in the event of the disapproval or a conditional approval of plans which is unacceptable to the Company, settled as provided in paragraph 4 below.

4. Any difference between the Company and the Authority as to the reasonableness of withholding consent to any plans under paragraph 3(2) above or approving any plans subject to unreasonable conditions shall be referred to and determined 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.

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### **EXPLANATORY NOTE**

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

This Order authorises the Felixstowe Dock and Railway Company (the applicants for the Order) to construct and maintain a specified work at Felixstowe and to carry out subsidiary works. The

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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specified work, together with adjacent land of the Company used for the business, form the undertaking of the Company.

The Felixstowe Dock and Railway Act 1988 and the Harwich Haven Act 1974 are amended by articles 3 and 8 respectively of this Order.

The Order also extends the limits of jurisdiction of the Company as a harbour authority.

The deposited plans and sections referred to in the Order may be inspected during normal working hours at the offices of the Felixstowe Dock and Railway Company at Tomline House, The Dock, Felixstowe, IP11 3SY, and at the offices of the Secretary of State for Transport, Great Minster House, 76 Marsham Street, London SW1 4DR.