

2011 No. 950

HARBOURS, DOCKS, PIERS AND FERRIES

**The Associated British Ports (Grimsby Riverside Ro-Ro
Terminal) Harbour Revision Order 2011**

Made - - - - - *23rd March 2011*

Coming into force - - - - - *7th April 2011*

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Associated British Ports have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

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

The Secretary of State (being the appropriate Minister under section 14(7)(b) of that Act), makes the following Order in exercise of the powers conferred by section 14 and now vested in the Secretary of State(c):

Citation and commencement

1. This Order may be cited as The Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011 and shall come into force on 7th April 2011.

Interpretation

2.—(1) In this Order—

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

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

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

“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 the Head of Ports Division in the Department for Transport and marked “Plans and Sections referred to in The Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011” one copy of which is deposited at the Department for Transport 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 Grimsby Docks;

“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)(f), a hydrofoil vessel and anything constructed or used to carry persons or goods by water; and

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

(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 S.I. 2006/1177, paragraph 2 and Part 1 of the Schedule, by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraph 8 and 9, and by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12.

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

(c) S.I. 1981/238.

(d) 1847 c.27.

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

(f) 1968 c.59.

(2) 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.

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

Incorporation of general enactments

3.—(1) The Act of 1847, 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;
- (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 shall not 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, shall not be construed as derogating from the power of A.B. Ports to discontinue any part of the undertaking.

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 East Lincolnshire and partly on the bed and foreshore of the river Humber—

Work No. 1

A piled finger pier angled inwards to the existing West Pier 180 metres in length between reference points E527923.943/N411742.945 and E528103.642/N411699.660 to provide vessel mooring points.

Work No. 2

A floating pontoon adjoining Work No. 1 secured by tubular piles between reference points E527889.840/N411786.888, E527919.005/N411779.862, E527899.672/N411699.598 and E527870.506/N411706.623.

Work No. 3

A new piled approach jetty and linkspan providing access to Work No. 2 and connecting to the existing West Pier at reference point E527840.350/N411618.560.

Work No. 4

A new access road provided in part along the line of the existing piled structure of West Pier, and in part along a new piled structure over or adjacent to the eastern elevation of the existing breakwater structure within the Royal Dock basin. Work No 4 includes an alteration and reconstruction of the existing piled structure of West Pier.

(2) A.B. Ports may, within the limits of deviation, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works.

(3) The works shall 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 five 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 shall be 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 under and adjoining Works Numbers 1 and 2 equal in size to the area stippled blue on sheet 2 of the deposited plans, to a maximum depth of 7.5 metres below Chart Datum (dredged berth pocket);
- (b) within the area stippled red on sheet 3 of the deposited plans, to a maximum depth of 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 shall 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 Secretary of State pursuant to Part 2 of the Food and Environment Protection Act 1985(a).

(3) The power to use, appropriate or dispose of materials referred to in this article shall not extend to wreck (within the meaning of Part IX of the Merchant Shipping Act 1995)(b) 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, shall extend to a distance of 600 metres in every direction from those works.

Application of byelaws of A.B. Ports

10.—(1) The Grimsby Docks Byelaws 1939 shall, subject to paragraph (2), apply in relation to the works, and nothing in this Order shall affect the right of A.B. Ports to enforce the byelaws or to amend or revoke them.

(a) 1985 c.48.

(b) 1995 c.21.

(2) In the Grimsby Docks Byelaws 1939 as applied by paragraph (1), references to “the prescribed limits” shall 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 Grimsby Docks Byelaws 1939 means the byelaws made by the London and North East Railway Company on 18th April 1939 and confirmed by the Minister of Transport on 10th May 1939.

Works to be within the district of North East Lincolnshire

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

- (a) the district of North East Lincolnshire;
- (b) the local justice area of Grimsby.

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

12.—(1) Unless construction has commenced within one year of the coming into force of the Order a tidal work shall 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—

- (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 shall be 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 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 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 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

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 shall be 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 shall be recoverable from A.B. Ports.

Permanent lights on tidal works

16.—(1) After the completion of a tidal work A.B. Ports shall 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 shall from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be 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 shall 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 shall from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be 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 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, 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.

For protection of Environment Agency

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

(2) In this article “the specified work” means the connection of Work No. 4 with the existing shore.

(3) Not less than 28 days before commencing construction of the specified work A. B. Ports shall submit to the Agency plans of that work for its consideration.

(4) The specified work shall be constructed materially in accordance with the plan submitted under paragraph (2) subject to such modifications as may reasonably required by the Agency to secure that the efficiency of the existing harbour wall for flood defence purposes is not impaired.

(5) In operating and maintaining the specified work and the area adjoining that work A.B. Ports shall 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.

(6) Any difference arising between A.B. Ports and the Agency under this article shall 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.

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

20.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(a) (“the Habitats Regulations”) shall 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.

Saving for Trinity House

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

Restrictions on permitted development rights

22. The Schedule to this Order shall have effect.

Saving for Crown Rights

23.—(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.

(a) S.I. 2010/490.

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

(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 Secretary of State for Transport

23rd March 2011

Richard Bennett
Head of Ports Division
Department for Transport

SCHEDULE

Article 22

RESTRICTIONS ON PERMITTED DEVELOPMENT RIGHTS

- 1.—(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 shall have effect as if the authority to develop given thereunder were subject to the restrictions contained in paragraphs 2 to 6 below.

(2) For the purpose of the Town and Country Planning 1990(a) the restrictions contained in paragraphs 2 to 6 below shall be deemed to be conditions imposed on the grant of planning permission.

2. 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.
3. No piling operations in connection with the works will be carried out except between 1st May and 31st July in any year.
4. Within 6 months of the completion of construction of Work No. 4, the existing wooden structures between Work No. 4 and the shore shall be removed.
5. In the construction and operation of the works directional lighting shall be used to reduce light spread on any adjacent mudflat so far as reasonably practicable.
6. For so long as Works Nos. 3 and 4 remain in operation A.B. Ports shall provide and maintain a two metre screen constructed of timber or plastic overlapping boarding along the western side of each of those works.

(a) 1990 c.8.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises A.B. Ports to construct and maintain a new riverside Ro-Ro facility on the River Humber adjoining the existing Western Pier, 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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STATUTORY INSTRUMENTS

2011 No. 950

HARBOURS, DOCKS, PIERS AND FERRIES

The Associated British Ports (Grimsby Riverside Ro-Ro
Terminal) Harbour Revision Order 2011

£5.75