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STATUTORY INSTRUMENTS

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**2004 No. 2190**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Associated British Ports (Immingham  
Outer Harbour) Harbour Revision Order 2004

*Made* - - - - 23rd August 2004  
*Coming into force* - - 30th August 2004

Whereas Association British Ports have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (2)(b) of the said section 14;

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(2)), in exercise of the powers conferred by that section and now vested in him(3), and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation and commencement**

1. This Order may be cited as the Associated British Ports (Immingham Outer Harbour) Harbour Revision Order 2004 and shall come into force on 30th August 2004.

**Interpretation**

2.—(1) Subject to the provisions of article 3(2) below, the words and expressions assigned meanings by Acts wholly or partly incorporated with this Order shall have those meanings in this Order, and

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

“the 1904 Act” means the Humber Commercial Railway and Dock Act 1904(5);

“the 1983 Act” means the Associated British Ports Act 1983(6);

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(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

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

(3) S.I.1997/2971.

(4) 1847 c. 27 (10 & 11 Vict.).

(5) 1904 c. lxxxv (4 Edw. 7).

(6) 1983 c. viii.

“the 1990 Act” means the Associated British Ports Act 1990(7);

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

“Chart Datum” in relation to any dredging is 3.9 metres below Ordnance Datum (Newlyn);

“the deposited maps” means the maps consisting of a location plan, a plan of the works numbered sheet 1, a key plan numbered sheet 2 and sections numbered sheets 3, 4 and 5, prepared in duplicate, signed by the Head of Ports Division in the Department for Transport and marked “Maps referred to in the Associated British Ports (Immingham Outer Harbour) Harbour Revision Order 2004” one copy of which is deposited at the Department and the other at the principal office of A.B. Ports;

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

“the Western Jetty” means the Western Jetty in the river Humber authorised by the 1904 Act as “jetty (No. 1)”;

“the limits of deviation” means the limits of deviation shown on sheet 1 of the deposited maps;

“the proposed outer harbour” means the area within the limits of deviation including the works;

“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;

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

“vessel” has the meaning assigned to it in section 3 (Interpretation) of the 1983 Act;

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

(2) Unless the context otherwise requires, 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 descriptions of works shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, point or dimension.

### **Incorporation of Act of 1847**

3.—(1) The 1847 Act, except sections 6 to 13, 16 to 23, 25, 48 to 50, 77 to 80, 83 to 90, 97 to 99 and 101, so far as applicable for the purposes of and not inconsistent with this Order, is incorporated with and forms part of this Order.

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

(i) the expression “the special Act” means this Order;

(ii) the expression “the harbour, dock, or pier” means the works;

(iii) the expression “the harbour master” means, in relation to the works, the Dock Master;

(iv) for the meaning assigned to the word “vessel” by section 3 of the 1847 Act there shall be substituted the definition of the word “vessel” contained in article 2(1) above; and

(v) section 53 of the 1847 Act shall not be construed as requiring the harbour 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;

Provided that a notice which is not in writing shall not be deemed to be sufficient unless in the opinion of the court before which any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel.

## Power to make works

4.—(1) A.B. Ports may, in the lines and situations shown on sheet 1 of the deposited maps and according to the levels shown on sheets 3, 4 and 5 of the deposited maps, make and maintain the following works on the bed and foreshore of the river Humber—

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Work No. 1	A bund commencing on the eastern face of the existing Humber International Terminal at a point 70 metres south of its north eastern corner, extending 300 metres in a south-easterly direction and terminating at a point on the existing flood defence wall 250 metres north east from the Immingham Bulk Terminal Conveyor, together with a new sea wall and a reclamation of the foreshore of the river Humber on the landward side of the bund.
Work No. 2	A ramp commencing at the north eastern corner of the existing Humber International Terminal and extending in an easterly direction for 100 metres.
Work No. 3	A ramp commencing on the face of the existing Humber International Terminal immediately south of Work No. 2 and extending in a south-easterly direction for 100 metres.
Work No. 4	A ramp commencing on the face of the existing Humber International Terminal 50 metres south of Work No. 3 and extending in a south-easterly direction for 100 metres.
Work No. 5	A ramp commencing on the face of the bund comprised in Work No. 1 at a point 100 metres north of the existing flood defence wall and extending in a south-easterly direction for 100 metres.
Work No. 6	A ramp commencing on the face of the bund comprised in Work No. 1 at a point 50 metres south of Work No. 5 and extending in a south-easterly direction for 100 metres.
Work No. 7	A line of mooring dolphins consisting of mooring points and jetty protection connected for all or part of its lengths by a walkway, commencing at the north eastern corner of the existing Humber International Terminal and running parallel to Work No. 2 and then parallel to the Immingham Bulk Terminal Jetty, together with jetty protection works at the south eastern end of the Immingham Bulk Terminal Jetty.
Work No. 8	A line of mooring dolphins connected for all or part of its length by a walkway commencing at a point adjoining the end of either or both of

Work No. 9	Works Nos. 3 and 4 and extending 230 metres in a south-easterly direction.  A line of mooring dolphins connected for all or part of its length by a walkway commencing at a point adjoining the end of either or both of Works Nos. 5 and 6 and extending 230 metres in a south-easterly direction.
Work No. 10	The demolition and removal of the Western Jetty for a distance of 180 metres from its western end, together with the strengthening of the remaining part of the jetty (and works to improve the berth on the south side of the jetty).
Work No. 11	A quay commencing by a connection with Work No. 1 at a point adjoining Work No. 6 and extending adjoining the existing flood defence wall in a south-easterly direction for 400 metres.

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(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 it from time to time deems 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 or the carrying out of dock operations at or on the works including, in particular—

- (a) strengthening works to the Immingham Bulk Terminal within the limits of deviation; and
- (b) works to channel, culvert, or divert existing watercourses within Work No. 1.

#### **Power to deviate**

6. In constructing Works Nos. 1 to 11 A.B. Ports may deviate laterally from the lines or situations shown on sheet 1 of the deposited maps and described in article 4 (Power to make works) above to the extent of the limits of deviation and may deviate vertically from the levels shown on sheets 3, 4 and 5 of the deposited maps 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 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 the proposed outer harbour to a maximum depth of 10 metres below Chart Datum; and
- (b) in the approaches adjoining or near to the proposed outer harbour to a maximum depth of 9.1 metres below Chart Datum;

and may (subject to paragraphs (2) and (3) below) 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:

- (a) be disposed of in contravention of the provisions of any enactment relating to the disposal of waste; or
- (b) be deposited below the level of mean high-water springs otherwise than in such places and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(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<sup>(8)</sup>) found by A.B. Ports.

(4) Nothing in this article shall be construed as limiting the powers of A.B. Ports under section 9 of the Humber Conservancy Act 1905<sup>(9)</sup>.

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

**9.**—(1) 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 its 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; 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 A.B. Ports.

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

**10.**—(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 without reasonable excuse A.B. Ports fails to notify Trinity House as required by paragraph (1) above or to comply in any respect with a direction given under the said paragraph,

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<sup>(8)</sup> 1995 c. 21.

<sup>(9)</sup> 1905 c. clxxix.

it shall be liable on summary conviction to a fine not exceeding the statutory minimum and on conviction on indictment to a fine.

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

**11.**—(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 of 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 paragraph (1) above.

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) above 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 so doing shall be recoverable from A.B. Ports.

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

**12.** The Secretary of State may at any time, if he 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**

**13.**—(1) After the completion of a tidal work A.B. Ports shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such 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) above, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for A.B. Ports to prove that all due diligence was used to secure compliance with the direction.

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

**14.**—(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) above, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for A.B. Ports to prove that all due diligence was used to secure compliance with the direction.

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

15. 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 200 metres in every direction from those works.

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

16.—(1) The Immingham Dock Byelaws 1929 shall be deemed to apply in relation to the works and may be enforced by A.B. Ports accordingly until such time as new byelaws relating to the works shall be made by A.B. Ports and come into operation.

(2) In the Immingham Dock Byelaws as applied by paragraph (1) above, references to “the prescribed limits” shall be construed as extending to the limits within which the powers of the Dock Master may be exercised under article 15 (Limits of jurisdiction of Dock Master) of this Order.

(3) In this article “Immingham Dock Byelaws 1929” means the byelaws made by the London and North Eastern Railway Company on the 1st day of January 1929 and confirmed by the Minister of Transport on the 4th day of January 1929.

### **Works to be within district of North East Lincolnshire, etc.**

17. In so far as the works are not situated within the existing area of a local authority they shall be deemed to be within—

- (a) the district of North East Lincolnshire; and
- (b) the parish of Immingham and
- (c) the petty sessional division of Grimsby and Cleethorpes.

### **Conservation (Natural Habitats, &c.) Regulations 1994**

18. Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(10)</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>(11)</sup> for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

### **Protection for Environment Agency**

19.—(1) The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and A.B. Ports, have effect.

(2) In this article—

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

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

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure or appliance constructed or used for land drainage, defence against water (including sea water) or tidal monitoring;

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<sup>(10)</sup> S.I. 1994/2716.

<sup>(11)</sup> S.I. 1995/418.

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

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

“outfall” means—

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

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means any permanent or temporary work or operation authorised by the Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991(12).

(3) Before beginning to construct any specified work or any compensatory habitat to be constructed in connection with the specified work, A.B. Ports shall submit to the Agency plans of the work or habitat and such further particulars available to it as the Agency may reasonably require.

(4) Without prejudice to paragraph (3) above, A.B. Ports shall ensure that its contractor provides the Agency with all necessary hydraulic information in order to identify and quantify any effects of accumulation or erosion or alteration of the tidal flow or littoral drift which are likely to be caused by any such specified work and such information shall be accompanied by an appropriate assessment of that information and of any remedial measures which may be reasonably necessary having regard to any such likely effects.

(5) Any specified work and any compensatory habitat to be constructed in connection with the specified works shall not be constructed except in accordance with such plans as may be approved in writing by the Agency or settled in accordance with paragraph (27) below.

(6) Any approval of the Agency required under paragraph (5) above—

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

(7) Without prejudice to the generality of paragraph (6) above, the requirements which the Agency may impose under that paragraph include—

- (a) conditions as to the time at which the manner in which any work is to be carried out;
- (b) conditions requiring A.B. Ports at its own expense—
  - (i) to provide or maintain means of access for the Agency;
  - (ii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments, outfalls and other new works and the strengthening, repair or renewal of existing banks, walls or embankments, outfalls or other works) as are reasonably necessary to safeguard any drainage work against damage or to secure



that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reasons of any specified work or the provision of compensatory habitat;

- (iii) to monitor accumulation, erosion or alteration of the tidal flow or littoral drift arising during the construction or following the completion of the specified works;
- (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

(8) Any specified work, any compensatory habitat approved under paragraph (5) above and any protective works required by the Agency under paragraph (7) above, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(9) A.B. Ports shall give to the Agency notice in writing of the commencement of any specified work and of the construction of any such compensatory habitat not less than 14 days in each case prior to the commencement and notice in writing of completion not later than 7 days after such completion.

(10) If, during the construction of a specified work or within 10 years after the completion of such work, there is caused or created an accumulation or erosion or alteration of the tidal flow or littoral drift which in whole or in part is reasonably attributable to such work and which causes damage, or reasonable expectation of damage, A.B. Ports shall, if so required by the Agency before or within the period of 10 years after such completion and to the extent that it is so attributable remedy such accumulation, erosion, alteration of tidal flow or littoral drift, in the manner specified in paragraph (13) below and, if it refuses or fail so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from A.B. Ports.

(11) Should any accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage or reasonable expectation of damage, arise within the said period of 10 years and be required to be remedied in accordance with paragraph (10) above, any continuation or recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall from time to time be so remedied by A.B. Ports during the said period of 10 years and at any time thereafter, save that A.B. Ports' obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further such accumulation or erosion or alteration of the tidal flow or littoral drift.

(12) In paragraph (10) and (11) above, "damage" means any damage to the bed or banks of the river Humber or any adverse effect upon the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.

(13) For the purposes of paragraphs (11) and (12) above—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency.

(14) To the extent that A.B. Ports establishes by surveys, inspections, tests or sampling and without unreasonably delaying the execution of any remedial action required under paragraph (10) above that such accumulation or erosion or alteration of tidal flow or littoral drift would have been caused in any event by factors other than the construction of a specified work A.B. Ports shall not be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift.

(15) Any specified work and any work constructed as part of or to facilitate the provision of a compensatory habitat constructed in connection with the specified works which, in either case,

provides a defence against flooding shall be maintained by and at the expense of A.B. Ports to the reasonable satisfaction of the Agency.

(16) If any such work is no longer required by A.B. Ports or is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require A.B. Ports at A.B. Ports' own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Agency thinks proper.

(17) If, on the expiration of 30 days from the date on which a notice is served upon A.B. Ports it has failed to comply with the requirements of the notice, the Agency may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from A.B. Ports.

(18) If by reason of the construction of any specified work or any work constructed as part of or to facilitate the provision of a compensatory habitat constructed in connection with a specified work or by reason of the failure of any such work or of A.B. Ports to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by A.B. Ports to the reasonable satisfaction of the Agency and, if A.B. Ports fails to do so, the Agency may make good the same and recover from A.B. Ports the expense reasonably incurred by it in so doing.

(19) If any works are constructed by the Agency in relation to a drainage work A.B. Ports shall have no claim against the Agency in respect of any additional costs which may be incurred by A.B. Ports as a result of such works.

(20) A.B. Ports shall indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this article;
- (b) in the inspection of the construction of the specified works, any compensatory habitat approved under paragraph (5) above and any protective works required by the Agency under this article.

(21) Without prejudice to the other provisions of this article A.B. Ports shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Agency by reason of the construction of any of the works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of A.B. Ports, its contractors, agents, workmen, or servants whilst engaged upon any such work.

(22) The Agency shall give A.B. Ports reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of A.B. Ports which agreement shall not be unreasonably withheld.

(23) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (if it was done without neglect or default on behalf of the Agency, of any person in its employ or of its contractors or agents) relieve A.B. Ports from any liability under the provisions of this article.

(24) Nothing in paragraphs (18) or (21) shall impose any liability on A.B. Ports in respect of accumulation or erosion or alteration of the tidal flow or littoral drift other than such accumulation or erosion or alteration of the tidal flow or littoral drift which A.B. Ports is liable to remedy under paragraph (10) or (11).

(25) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or

imposed under the Land Drainage Act 1991(13), the Salmon and Freshwater Fisheries Act 1975(14), the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Agency.

(26) For the purposes of section 109 of the Water Resources Act 1991 (as to structures in or under watercourses), section 23 of the Land Drainage Act 1991 or any byelaw relating to the land drainage or flood defence functions of the Agency, as applying to the construction of any specified work or any compensatory habitat to which paragraph (5) above applies, any approval given or deemed to be given by the Agency under this article with respect to such construction shall be deemed to constitute a consent or approval under that section or byelaw.

(27) Unless the parties agree to arbitration any difference arising between A.B. Ports and the Agency under paragraph (3) above shall be settled by the Secretary of State for the Environment, Food and Rural Affairs on a reference to him by either party after notice in writing to the other.

(28) Subject to paragraph (27) above, any difference arising between A.B. Ports and the Agency under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

### **Saving for Crown Rights**

**20.**—(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) above 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 August 2004

*Phil Carey*  
Heads of Ports Division in the  
Department for Transport

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(13) 1991 c. 59.

(14) 1975 c. 51.

**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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## EXPLANATORY NOTE

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

This Order authorises Associated British Ports to construct harbour works at Immingham and confers ancillary powers in connection with the works.

The deposited maps defined in Article 2 of the Order may be inspected during normal hours at the principal office of Associated British Ports at 150 Holborn, London EC1N 2LG and at the office of the Department for Transport at the offices of the Secretary of State for Transport, Ports Division, Zone 2/31 Great Minster House, 76 Marsham Street, London SW1P 4DR.