
STATUTORY INSTRUMENTS

2010 No. 626

The Harwich Parkeston Quay Harbour Revision Order 2010

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Harwich Parkeston Quay Harbour Revision Order 2010 and comes into force on 17th March 2010.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(1);

“the 1983 Act” means the Parkeston Quay Act 1983(2);

“area of seaward construction activity” means the area of the sea within the limits of deviation shown on the deposited plans;

“the authorised works” means the works and operations authorised by article 3 and article 5;

“boat harbour” means the area bounded by a line drawn from Trinity Pier commencing at the landward end of that pier at a point at TM2580832662, then extending in a south-easterly direction along the Trinity House buoy yard quay wall to a point at TM2585832568, then continuing along the wall in a south-westerly direction to a point at TM2584132553, then extending in a south-easterly direction towards the A120 to a point at TM2587932513, then continuing in a south-westerly direction to a point at TM2582832465, then extending in a north-westerly direction to a point at TM2579132479, then in a south-westerly direction to a point at TM2569132454, then in a south-westerly direction to a point at TM2564332368, then in a westerly direction to a point at TM2558132366, then in a northerly direction to a point at TM2558832684, then in an easterly direction to a point at TM2561432683, then in a north-easterly direction to a point at TM2573132747 then in a north-easterly direction to a point at TM2574232748, then in a south easterly direction to a point at TM2580032661, then passing by the shortest line in an easterly direction and terminating at the point of commencement and for the purpose of identification only is shown cross hatched black on sheet 5 of the deposited plans;

“the Company” means Harwich International Port Limited a company incorporated in England with registered number 2486146;

“deposited plans” and “deposited sections” mean respectively the plans and sections prepared in duplicate signed by the Head of the Ports Division in the Department for Transport and marked “The Harwich Parkeston Quay Harbour Revision Order 2010”, of which copies are

(1) 1847 c. 27.
(2) 1983 c. vi.

deposited at the offices of the Secretary of State for Transport and the registered office of the Company;

“existing” means existing at the commencement of this Order;

“the harbour undertaking” means the undertaking of the Company authorised by the Harwich Parkeston Quay enactments;

“Harwich Haven Authority” means the body having that name pursuant to section 12 of the Harwich Harbour Act 1988(3) and has the meaning assigned by the Harwich Harbour Acts and Orders 1973 to 2000;

“Harwich Parkeston Quay enactments” means the enactments specified in Schedule 1 and this Order;

“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;

“mooring” includes any buoy, pile, pontoon, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“the river” means the river Stour;

“tidal work” means so much of the authorised 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.

(2) This Order shall be read as if the words “or thereabouts” were inserted after each direction, distance and length mentioned in article 3.

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

PART 2

WORKS PROVISIONS

Power to make works

3.—(1) Subject to the provisions of this Order, the Company may, in the lines or situations shown on the deposited plans and according to the levels shown on the deposited sections, make and maintain the following works, with all necessary works and conveniences connected with them, as to part in the parish of Harwich and Ramsey and as to the remainder in the parish of Parkeston, in the district of Tendring, in the county of Essex, and partly on the foreshore and bed of Bathside Bay—

Work No. 1 - A quay wall, including berths for vessels and quayside cranes, commencing with a junction at the termination of the existing quay wall of Parkeston Quay at its eastern end (point C shown on the deposited plans and deposited sections), then extending in a straight line to a point at TM2562632679 (point D shown on the deposited plans and deposited sections), then extending in a straight line to a point at TM2562232490 (point E shown on the deposited plans and deposited sections), then extending in a straight line and terminating at a point at TM2564832490 (point F shown on the deposited plans and deposited sections) and enclosing an area of 74.55 hectares of the bed of Bathside Bay being the area enclosed by that quay wall and the line of mean high water springs shown on the deposited plans and deposited sections commencing at point C and terminating at point F.

(3) 1988 c. xxxiv.

Work No. 2 - A culvert, being an extension of the existing Dovercourt Dock River culvert, commencing at the existing outfall chamber and extending in a straight line and terminating at an outfall to be constructed in the proposed quay wall comprising part of Work No. 1 at a point 30 metres east of the commencement of Work No. 1.

Work No. 3 - A harbour wall incorporating an access walkway of solid construction commencing at the proposed quay wall comprising part of Work No. 1 at point D shown on the deposited plans and deposited sections and extending in a north-easterly direction and terminating at a point at TM2574332746 and having a length of 137 metres and a width not exceeding 13.7 metres.

Work No. 4 - A floating wavescreen of segmental fibre and galvanised steel reinforced concrete boxes with expanded polystyrene cores and anchored to the bed of the boat harbour, commencing at a point at TM2581232631 extending in a north westerly direction along the south side of the train ferry gantry for a distance of 110 metres and terminating at a point at TM2571232676.

Work No. 5 - A slipway adjacent to the proposed quay wall forming part of Work No. 1, commencing at point E shown on the deposited plans and deposited sections and terminating in the boat harbour at a point at TM2562732556.

(2) The Company may, within the limits of deviation, from time to time alter or reconstruct temporarily or permanently the authorised works.

(3) The Company may fill in and reclaim, or complete the reclamation of, so much of the foreshore and bed of Bathside Bay as is situated within the limits of deviation landward of the line of Work No. 1, and may hold and use, as part of the harbour undertaking or for other purposes of the Company, so much of that foreshore and bed as is required for or in connection with those purposes and may hold and use or dispose of the remainder for other purposes.

(4) The Company may, when constructing Work No. 3, demolish the train ferry pier to the extent shown on the deposited plans and deposited sections.

(5) For the purposes of section 23 of the Land Drainage Act 1991(4) (prohibition on obstructions etc in watercourses) as applying to the construction of the authorised works, any consent or approval by the Environment Agency given or deemed to be given under any provision of this Order with respect to the erection of any structure shall be deemed also to constitute a consent or approval under the said section 23 as respects the erection of that structure.

Period for completion of works

4. If the works are 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 granted by this Order to the Company for making and maintaining the works shall cease except as to so much of the works as are then substantially commenced.

Subsidiary works

5.—(1) The Company may from time to time within the limits of deviation provide and operate such dock facilities, together with works ancillary to these facilities, as may be necessary or convenient for the construction of the works or the operation of the harbour undertaking, and for this purpose the Company may provide, construct and maintain roads, railway lines, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, container handling equipment, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks,

(4) 1991 c. 59.

equipment, machinery and appliances and such other works and conveniences 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 (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Power to dredge

6.—(1) The Company may (subject to the consent required by section 34 (crown rights) of the 1983 Act as applied by paragraph 1 of Part 1 of Schedule 3) from time to time deepen, dredge, scour, cleanse, alter and improve the bed, channel and foreshore of the river in the vicinity of the authorised works and the approaches to the river, and blast any rock in the river, for the purpose of constructing and maintaining those works and obtaining, preserving and improving uninterrupted access to and from those works or any other part of the harbour undertaking.

(2) Subject to paragraph (3), any materials taken up or collected in the course of such operations shall (subject to the consent required by section 34 of the 1983 Act) be the property of the Company and may be used, sold, removed, deposited or otherwise disposed of as the Company may think fit.

(3) No such materials shall be deposited below the level of high water except in accordance with—

- (a) such conditions and restrictions as may be approved by the Secretary of State; and
- (b) Part 2 of the Food and Environment Protection Act 1985(5).

Power to deviate

7.—(1) In the construction of any part of the authorised works the Company may deviate from the lines or situations shown on the deposited plans to any extent not exceeding the limits of deviation, and may deviate vertically from the levels 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.

(2) Notwithstanding the limits of deviation shown on the deposited plans, when the authorised works have been constructed the northerly limit of deviation of Works Nos. 1, 2, 3, 4 and 5 shall be 3 metres north of, respectively, the line of the proposed quay face and the centre line of Work No. 3, both as shown on the deposited plans.

Application of works provisions of 1983 Act

8.—(1) The following provisions of the 1983 Act relating to the construction of works shall, with the necessary modifications, apply additionally to the authorised works (including the demolition of the train ferry pier) as they apply to the works authorised by that Act as if the authorised works had been the quay and connected works authorised by those enactments—

- Section 9 – (underpinning of buildings near works);
- Section 10 - (use of sewers, etc., for removing water);
- Section 11 - (tidal works not to be executed without approval of Secretary of State);

(5) 1985 c. 48.

- Section 12 - (survey of tidal works);
- Section 13 - (lights on tidal works during construction, etc.);
- Section 14 - (permanent lights on tidal works);
- Section 15 - (abatement of works abandoned or decayed);
- Section 16 - (provision against danger to navigation);
- Section 17 - (defence of due diligence).

(2) The necessary modifications referred to in paragraph (1) are—

(a) In section 10, leave out subsection (3) and insert—

“(3) This section does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(6).”

(b) In sections 11 to 16 the words “tidal work” have the meaning given by article 2.

(c) In subsection (1) of section 13, after “near” insert “(a)” and after “work” insert—

“, including any temporary work; or

(b) any plant, equipment or other obstruction placed, in connection with any work authorised by article 3 (power to make works) or article 5 (subsidiary works) of the Harwich Parkeston Quay Harbour Revision Order 2010, within the area of seaward construction activity;”.

Extent of Parkeston Quay and limits of jurisdiction

9.—(1) The authorised works shall form part of Parkeston Quay and the provisions of the Great Eastern Railway Act 1874(7) and all other provisions of the Harwich Parkeston Quay enactments shall (so far as the same are applicable and are not inconsistent with the provisions of this Order) apply to the authorised works as if the authorised works had been the quay and connected works authorised by those enactments.

(2) The limits of jurisdiction for Parkeston Quay shall be the area described in Schedule 2 and, for the purpose of identification only, shown edged red on sheet 4 of the deposited plans and deposited sections.

(3) In its application to the harbour undertaking the expression “the prescribed limits” in the 1847 Act shall be the area referred to in paragraph (2).

Planning, etc. jurisdiction

10.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the limits of deviation shall, for the purposes of the Control of Pollution Act 1974(8) and the Town and Country Planning Act 1990(9), be annexed to and incorporated with the district of Tendring.

(2) On the accretion date, the area of the whole or of so much of the works authorised by paragraphs (1) and (2) of article 3 as shall have been completed or substantially commenced shall be annexed to and incorporated with the parishes of Harwich and Ramsey and Parkeston (in proportion to the extent of the common boundary of those parishes), the district of Tendring and the county of Essex.

(6) 1991 c. 57.

(7) 1874 c. cxxviii.

(8) 1974 c. 40.

(9) 1990 c. 8.

(3) In this article “accretion date” means the date when the works so authorised have been completed or, if sooner, the date when the powers granted by this Order shall cease to have effect pursuant to article 4.

PART 3

BOAT HARBOUR

Restriction of boat harbour to pleasure craft and certain other vessels

11.—(1) Notwithstanding section 33 of the 1847 Act (harbour, dock and pier to be free to the public on payment of rates), as incorporated by any provision of the Harwich Parkeston Quay enactments, but subject to article 13, the waters of the boat harbour shall be for the exclusive use of vessels falling within paragraph (2) and accordingly the Company shall not permit any other vessel to use those waters.

(2) Each of the following vessels fall within this paragraph—

- (a) a recreational craft including a craft used for recreational fishing;
- (b) a vessel which is, for the time being, used for or in connection with sea fishing for profit;
- (c) the vessel used at the date when the works have been substantially completed by the Harwich and Dovercourt Sailing Club as its clubhouse and any replacement vessel which is so used and which, in either case, shall have a length not exceeding 26 metres and a beam not exceeding 7 metres; and which shall be permanently moored alongside Work No. 5;
- (d) a vessel for the time being employed for the purposes of any of the functions of the Company;
- (e) a vessel for the time being employed in connection with the provision of services at the boat harbour or on lands adjacent to the boat harbour;
- (f) a lifeboat or a vessel used by the coastguard service, the Essex Sea Fisheries Committee, the Environment Agency, the Harwich Haven Authority, Trinity House or the Ministry of Defence; or
- (g) any vessel operated pursuant to an agreement in writing with the Harwich Haven Authority.

(3) In paragraph (2), “recreational craft” means any vessel of not more than 30 tons gross used wholly or mainly for recreation and not for the carriage of passengers or goods for reward.

(4) For the purposes of this article, the tonnage of a vessel shall—

- (a) in the case of a vessel having a tonnage figure recorded in its certificate of registry, be taken to be that figure; and
- (b) in the case of any other vessel, be calculated in accordance with the provisions of Part 3 of the Merchant Shipping (Tonnage) Regulations 1997⁽¹⁰⁾.

Powers as to moorings, etc.

12.—(1) The Company may within the boat harbour provide, place, lay down, maintain, use and have moorings for vessels—

- (a) on land owned or leased by the Company or in which they hold an appropriate interest; or

⁽¹⁰⁾ S.I. 1997/1510, amended by S.I. 1998/1915.

- (b) with the consent in writing of the owner and lessee of land, on any other land in the boat harbour.
- (2) The Company may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Company such charges as the Company may from time to time prescribe.
- (3) The Company may compound with any person with respect to the payment of the charges prescribed under paragraph (2).
- (4) The Company may give notice in writing to the person having the control of any vessel using any mooring in the boat harbour at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Company to provide, place or lay down moorings in accordance with paragraph (1).
- (5) If any person fails to comply with a notice given by the Company under this paragraph, the Company may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.
- (6) The Company may from time to time grant to a person a licence to place, lay down, maintain, use and have existing and future moorings, for vessels in the boat harbour.
- (7) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any mooring on land not owned or leased by that person or by the Company or in which that person has no appropriate interest.
- (8) Any such licence shall, unless otherwise stated in the licence in question, be valid for a period of one year commencing with its date.
- (9) The Company may charge for such a licence such fee as the Company may from time to time prescribe.
- (10) Sections 43 to 48 of the 1847 Act shall apply in relation to fees charged under this article.
- (11) Any person who—
- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings; or
 - (b) intentionally and without lawful authority pulls up or removes any mooring in the boat harbour or any part of the boat harbour; or
 - (c) without reasonable excuse causes or permits a vessel to be moored in the boat harbour except at a mooring provided or licensed by the Company under this article or at a quay, jetty, slipway or other work or to land owned or leased by the Company; or
 - (d) places, lays down or maintains in the boat harbour any mooring not provided or licensed by the Company under this article,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (12) If any person places, lays down or maintains in the boat harbour any mooring not provided or licensed by the Company under this article, the Company may remove the mooring in question and recover from that person the expenses incurred in doing so.
- (13) Before exercising the powers of paragraph (1) the Company shall notify the Harwich Haven Authority and shall provide details of the proposed exercise including plans showing the proposed position and nature of the mooring.
- (14) In this article “vessel” does not include a houseboat.

Preferred vessels

13.—(1) During the period of one year commencing with the date when Works Nos. 3, 4 and 5 have been substantially completed the Company shall provide moorings within the boat harbour for preferred vessels.

(2) Subject to paragraph (3), in this article “preferred vessels” means the vessels designated as such during the period mentioned in paragraph (1) by the bodies specified in the first column of the following table, being vessels which shall not exceed the number specified in the second column of that table and which shall not exceed the length specified in the third column of that table—

<i>Designating body</i>	<i>Maximum number of vessels which may be designated</i>	<i>Maximum length of designated vessels</i>
Harwich and Dovercourt	(a) 36 vessels	8 metres
Sailing Club	(b) 20 vessels	10 metres
	(c) 4 vessels	
		12 metres
Harwich Fishermen’s	(a) 10 vessels	10 metres
Association	(b) 8 vessels	12 metres
Harwich Small Boat Owners	18 vessels	12 metres
Association		

(3) The vessel referred to in paragraph (2)(c) of article 11 shall, for the purposes of this article be a preferred vessel and shall continue to be such after the expiry of the period mentioned in paragraph (1) so long as it is—

- (a) used as the clubhouse of the Harwich and Dovercourt Sailing Club; and
- (b) permanently moored in the manner specified in paragraph (2)(c) of article 11.

(4) The Company may levy on a preferred vessel any of the charges leviable by or under any of the provisions of the Act.

Power to appropriate part of boat harbour

14.—(1) Subject to articles 11 and article 13, the Company may from time to time set apart and appropriate any part of the boat harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Company may think fit.

(2) No person or vessel shall make use of any part of the boat harbour so set apart or appropriated without the consent of the Company’s officer or other duly authorised officer of the Company, and—

- (a) the Company’s officer or, as the case may be, such duly authorised officer, may order any person or vessel making use of the boat harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by any provisions of the Harwich Parkeston Quay enactments, shall extend and apply with the necessary modifications to any such vessel.

(3) In this article, “Company’s officer” means any person exercising the functions of a harbour master on behalf of the Company.

PART 4

MISCELLANEOUS AND GENERAL

Power to lease etc.

15.—(1) The Company may at any time lease or grant for the purposes of the harbour undertaking the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour undertaking for such period or periods and on such terms and conditions as may be agreed between the Company and the persons taking the same.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Company other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Act.

(3) Section 23 of the 1847 Act (power to lease wharfs, warehouses, etc.), as incorporated by any provisions of the Harwich Parkeston Quay enactments, shall cease to have effect so far as that section would otherwise apply to the harbour undertaking.

Defence to proceedings in respect of statutory nuisance

16.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹¹⁾ (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work; and—

- (a) that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65, of the Control of Pollution Act 1974⁽¹²⁾; or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974, namely—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded),

shall not apply where the consent relates to the use of premises by the Company for the purposes of, or in connection with, the exercise of the powers conferred by this Order with respect to the construction or maintenance of the work.

Protection of interests

17. Schedule 3 has effect.

(11) 1990 c. 43.

(12) 1974 c. 40.

Arbitration

18. Where under any provision of this Order, including any provision applied by this Order, any difference is to be referred to or settled by arbitration, then such difference shall be referred to and settled 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.

Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994

19.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹³⁾ (“the Habitats Regulations”) shall not apply to any planning permission which relates to the authorised works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995⁽¹⁴⁾ 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 authorised works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 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.

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

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a Government Department or held in trust for Her Majesty for the purposes of a Government Department, without the consent in writing of that Government Department.

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

Signed by authority of the Secretary of State for Transport

3rd March 2010

Richard Bennett
Head of Ports Division
Department for Transport

⁽¹³⁾ S.I. 1994/2716.

⁽¹⁴⁾ S.I. 1995/418.