STATUTORY INSTRUMENTS

2007 No. 3219

HARBOURS, DOCKS, PIERS AND FERRIES

The Felixstowe Dock and Railway Harbour Revision Order 2007

Made - - - - *9th November 2007*

Coming into force - - *13th November 2007*

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The Felixstowe Dock and Railway Company 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 subsection (7) of section 14**(b)** of that Act) in exercise of the powers conferred by that section and now vested in her**(c)** makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Felixstowe Dock and Railway Harbour Revision Order 2007 and shall come into force on 13th November 2007.

Interpretation

2.—(1) In this Order—

"the 1988 Act" means the Felixstowe Dock and Railway Act 1988(**d**);

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

"the Company" means the Felixstowe Dock and Railway Company;

"control tower" means a building comprising an area at ground level not exceeding 350 square metres and having a height above ground level not exceeding 19 metres to be located on the north side of the work and to be used for regulating the movement of vessels;

(**a**) 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, section 40 and Schedule 12 (Part II) and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.
(**b**) For the definition of "the Minister" (mentioned in section 14(7)) *see* section 57(1).
(**c**) S.I. 1981/238.
(**d**) 1988 c. xiv.

"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 the Ports Division in the Department for Transport and marked "The Felixstowe Dock and Railway Harbour Revision Order 2007" of which copies are deposited at the offices of the Secretary of State for Transport 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 and Orders 1879 to 2002 and this Order and includes the open cut or channel also constructed under those powers, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with them, as from time to time existing;

"Dock Basin" means that part of the dock shown on sheet 2 of the deposited plans and described as "Dock Basin";

"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 subject to the modifications set out in article 5(2);

"proposed viewing area" means the proposed viewing area referred to in article 8;

"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;

"the tribunal" means the Lands Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"the undertaking" means the harbour undertaking of the Company as authorised from time to time;

"work" means any work authorised by 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 shown, for the purpose of identification only, edged red on sheet 3 of the deposited plans; and in the following provisions of this Order, references to the limits of the dock shall be construed as references to the limits so described.

(2) Any references to the limits of the dock contained in the Felixstowe Dock and Railway Acts and Orders 1879 to 2002 or in any byelaws, orders or regulations made under those Acts or Orders, shall be construed as references to the limits described in Schedule 1 to this Order.

(3) Article 3 (Limits of dock) of, and Schedule 1 to, the Felixstowe Dock and Railway Harbour Revision Order 2002(**a**) are revoked.

(**a**) S.I. 2002/2618.

PART 2

WORKS PROVISIONS

Power to construct works

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

> A quay, including berths for vessels, together with quayside cranes and a control tower, extending into Harwich Harbour from the walls of the Dock Basin and the existing quay lines and enclosing an area of 28.4 hectares of the bed of the Dock Basin and the bed of Harwich Harbour being the area enclosed by those walls and those quay lines and by an imaginary line commencing at a point at TM 2792333280 thence extending in a straight line to a point at TM2789333205, thence extending in a straight line to a point at TM2773333268, thence extending in a straight line to a point at TM2769833254, thence in a straight line to a point at TM2821431953, thence in a straight line to a point at TM2822731848 and thence in a straight line to a point at TM 2825731840.

(2) The Company may, for the purposes of the work authorised by paragraph (1), demolish and remove the structures lying within the limits of deviation (including the oil jetty, pipes, piers and pontoons) and enclose and reclaim so much of the bed of the Dock Basin and of Harwich Harbour and of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) 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.

(4) The work shall for all purposes form part of the undertaking.

Power to deviate

5.—(1) 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 1 metre upwards and to any extent downwards as may be necessary or convenient.

(2) When the work has been constructed the southerly and westerly limits of deviation shall be 44 metres seaward of the proposed viewing area, extending in a north-westerly direction 3 metres seaward of the proposed quay face and continuing north-westward to the northern limit of deviation.

Subsidiary works

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

(3) Article 3 of, and Parts 11 and 17 in Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995(**a**) (which respectively permit development authorised by a harbour revision order designating specifically both the nature of the development authorised and the land on which it may be carried out and development of operational land in respect of a dock or harbour undertaking) shall have effect in relation to a work as if the authority to develop given thereunder excluded buildings or any other structures or erections (including, without prejudice to the generality of the foregoing, stacks of goods, materials or shipping containers) above a height of 17 metres from ground level as shown on the deposited plans, other than the control tower, lights and lighting towers, cranes, trolleys, gantries, jibs or booms required for the construction of the work or the operation of the undertaking.

Period for completion of work

7.—(1) Subject to paragraph (2), 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.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 4 or article 6.

Viewing area for members of public

8. At any time after the work has been constructed, the Company may, in substitution for the existing public viewing area shown stippled black on sheet 2 of the deposited plans, carry out and maintain on, or on any part of, the land shown hatched black on that sheet works to provide the proposed viewing area accessible by and for the use of members of the public including a means of pedestrian and vehicular access over, or over any part of, the land shown cross hatched black on that sheet.

Power to dredge

9.—(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(**b**)) 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.

(**a**) S.I. 1995/418.
(**b**) 1995 c. 21, *see* section 255(1).

Obstruction of work

10. 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.

Planning, etc. jurisdiction

11.—(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(**a**) and the Town and Country Planning Act 1990(**b**), be annexed to and incorporated with the district of Suffolk Coastal.

(2) On the accretion date, the area of the whole or of so much of the works authorised by article 4 and article 6 as shall have been completed or substantially commenced shall be annexed to and incorporated with the Town of Felixstowe, the district of Suffolk Coastal and the county of Suffolk.

(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 cease to have effect pursuant to article 7.

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

12.—(1) Unless its construction has commenced within five years of the coming into force of this Order, no tidal work shall 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 the Secretary of State before that work is begun.

(2) Any request for the approval of the Secretary of State under paragraph (1) shall be accompanied by written evidence to demonstrate to the satisfaction of the Secretary of State that Schedule 2 has been complied with as respects the tidal work for which approval is being requested.

(3) If a tidal work is constructed, reconstructed, extended, enlarged, replaced or relaid in contravention of paragraph (1) or of any condition or restriction imposed under that 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 take whatever steps she considers appropriate to achieve the result required by the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, she 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 etc., during construction

13.—(1) The Company shall at or near—

(a) a tidal work, including any temporary work; or

(b) any plant, equipment or other obstruction placed, in connection with any work authorised by article 4 or article 6, within the area of seaward construction activity,

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(**a**) 1974 c. 40.
(**b**) 1990 c. 8.

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 and the Harwich Haven Authority or, failing agreement between them, the Secretary of State may from time to time direct.

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

Provision against danger to navigation

14.—(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 Harwich Haven Authority and Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Harwich Haven Authority and Trinity House or, failing agreement between them, Harwich Haven Authority may from time to time direct.

(2) If the Company fail to give the notification required by paragraph (1) or to comply in any respect with any direction given under that paragraph 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.

Abatement of works abandoned or decayed

15.—(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 that work or any part thereof, or to remove that 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 in any respect with the notice, the Secretary of State may take whatever steps she considers appropriate to achieve the result required by the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Survey of tidal works

16. 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

17.—(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 as Harwich Haven Authority and Trinity House or, failing agreement between them, Harwich Haven Authority may from time to time direct.

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

PART 3

MISCELLANEOUS AND GENERAL

Power to lease etc.

18.—(1) The Company may at any time lease or grant for the purposes of the 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 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 Harbours Act 1964(**a**).

Amendment of section 28 of Harwich Harbour Act 1974

19. Section 28(1) (for protection of Felixstowe Dock and Railway Company) of the Harwich Harbour Act 1974(**b**) is amended by the substitution, for the words "article 3 (Limits of dock) of, and Schedule 1 to, the Felixstowe Dock and Railway Harbour Revision Order 2002", of the words "article 3 (Limits of dock) of, and Schedule 1 to, the Felixstowe Dock and Railway Harbour Revision Order 2007".

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

20.—(1) Regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994(**c**) ("the Habitats Regulations") shall not apply to any planning permission which relates to the works authorised by article 4 or article 6 and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 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 those 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.

Defence to proceedings in respect of statutory nuisance

21.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**d**) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order shall be made, and no fine shall 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(**e**); or

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(**a**) Paragraph 9B was inserted by the Transport and Works Act 1992 (c. 42), section 63 and Schedule 3, paragraph 49(5).
(**b**) 1974 c. i. Section 28 was amended most recently by article 16 of the Felixstowe Dock and Railway Harbour Revision Order 2002 (S.I. 2002/2618).
(**c**) S.I. 1994/2716.
(**d**) 1990 c. 43.
(**e**) 1974 c. 40.

(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.

Defence of due diligence

22.—(1) In proceedings for an offence under article 13, 14 or 17 it is 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) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 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 of interests

23. Schedule 2 to this Order has effect.

Saving for Trinity House

24. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

25.—(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 the foregoing, 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)—

(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 upon such terms as may be considered necessary or appropriate.

Signed by authority of the
Secretary of State for Transport

9th November 2007

Richard Bennett
Head of Ports Division
Department for Transport

SCHEDULE 1

Article 3

LIMITS OF DOCK

An area bounded by an imaginary line commencing at a point (1) at TM2823731816, thence in a northerly direction to a point (2) at TM2828432014, 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 in a north-westerly direction

following the floodwall to a point (42) at TM2568435111, thence 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 TM2771333026, thence following a line 70 metres riverward from the line of the proposed quay face in a south-easterly direction to a point (48) at TM2811132021, thence in a southerly direction to a point (49) at TM2812031910, thence in a south-easterly direction to a point (50) at TM2818431840, thence in an east-south-easterly direction to and terminating at the point of commencement.

SCHEDULE 2

Article 23

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR HARWICH HAVEN AUTHORITY

1. The provisions of this Part 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 Part of this Schedule—

"the Authority" means Harwich Haven Authority;

"the Harbour" means Harwich Harbour as described in section 4(1)(a) of the Harwich Harbour Act 1974 (which defines the area of Harwich Harbour);

"the Haven" means the waters over which the Authority exercises jurisdiction as harbour authority;

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

3. The Company shall provide the Authority's harbour master with details of any operations (including programmes of construction), proposed in connection with the construction of any work, which will or may create such conditions in the waters of the Haven that the passage of any vessel navigating outside the limits of deviation may be significantly impeded; and before any such operation commences the Company shall agree with the harbour master any special measures which are to be taken to avoid obstructing vessels navigating in the Haven, including any special measures to ensure unrestricted passage for vessels engaged in the service of Trinity House for the purposes of locating, surveying and marking wrecks.

4. The Company shall appoint the Authority to be the Company's agent for the purpose of carrying out all environmental monitoring reasonably required as a result of the construction and operation of the works authorised by this Order.

5. The Authority shall keep separate accounts of any expenditure which it incurs in connection with environmental monitoring undertaken by the Authority as the Company's agent pursuant to paragraph 4.

6.—(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:

Provided that in the case of any work to be carried out under article 6, being a work which is required in an emergency, the Company shall not be required to submit plans of that work before its commencement but shall–

(a) give immediate notice of the work to the Authority; and

(b) submit plans of that work to the Authority as soon as reasonably practicable after its commencement.

(2) Whenever plans are submitted to the Authority under sub-paragraph (1) the Company shall also submit such further particulars by way of clarification of what is proposed as the Authority may, within 21 days from the day on which the plans are submitted under that sub-paragraph, reasonably require.

(3) The Authority may approve plans submitted to it in accordance with this Part of 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 under sub-paragraph (1) (or, where relevant, within 56 days of the provision of any information requested under sub-paragraph (2)) 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.

(4) Tidal 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 sub-paragraph (3) or settled as provided in paragraph 11.

(5) The Company shall give to the Authority not less than 28 days' notice of the commencement of any tidal work.

(6) Plans of a tidal work shall not be submitted by the Company to the Secretary of State for approval under article 12 until plans of that work have been approved by the Authority or deemed to have been approved in accordance with sub-paragraph (3) or settled as provided in paragraph 11; and if the Secretary of State requires the alteration of any plans so submitted, the Company shall, not less than 28 days before commencing the work, notify the Authority of the alteration.

(7) If there is any inconsistency between the plans of any tidal work approved or deemed to have been approved in accordance with sub-paragraph (3) or settled under paragraph 11 and the plans approved by the Secretary of State under article 12, the work shall be constructed in accordance with the plans approved by the Secretary of State.

(8) The exercise by the Company of the powers of article 9 for the purpose of improving access to and from the works shall not, for the purpose of section 19 (restriction on works, dredging and moorings) of the Harwich Harbour Act 1974, be taken to be specifically authorised by any enactment.

7. The Company shall carry out any tidal work with all reasonable dispatch and to the reasonable satisfaction of the Authority (and shall promptly remove all temporary works as soon as they are no longer required), so that traffic in the Haven does not suffer more interference than is reasonably necessary, and the Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey any tidal work.

8.—(1) If any tidal work is abandoned or falls into decay, the Authority may by notice in writing to the Company require them either to repair and restore that work or any part of it or (if the Company no longer require the work) to remove that work and restore the site to its former condition to such extent as the Authority reasonably requires.

(2) If a work which consists of a tidal work and a non-tidal work is abandoned or falls into decay and the non-tidal work is in such condition as to interfere with navigational safety, a notice under this paragraph may include the non-tidal work, or any part of it.

(3) In sub-paragraph (2), "non-tidal work" means so much of any work as is on or over land above the level of high water.

(4) If after such reasonable period as may be specified in a notice under this paragraph the work specified in that notice has not been carried out, the Authority may take whatever steps it considers appropriate to achieve the result required by the notice and the Company shall pay the amount of any expenditure reasonably incurred by the Authority in so doing.

9.—(1) If any berth approach within the Harbour becomes subject to sedimentation, scouring, currents or wave action which is wholly or partly caused by the construction or carrying on of the tidal works (including any temporary works) and which occurs during the period beginning with the commencement of the construction or carrying on of the tidal works and ending with the

expiration of five years after the date on which the last of those works is completed or the removal of such temporary works, as the case may be, the Company shall either—

(a) pay to the Authority any additional expense which the Authority may reasonably incur for the preservation or proper maintenance of the berth approach—

(i) in dredging the Harbour to remove the sedimentation,

(ii) in taking such action as the Authority considers to be necessary for the purpose of making good such scouring or the effects of such currents or wave action, or

(iii) as a result of increased frequency of maintenance dredging; or

(b) take the necessary action at their own cost subject to prior approval of the Authority, such prior approval not to be unreasonably withheld or delayed.

(2) Where dredging is undertaken under sub-paragraph (1) the Company shall pay for or carry out such dredging as may be necessitated by further sedimentation, scouring or wave action occurring within five years after completion of the dredging undertaken under sub-paragraph (1).

10.—(1) The Company shall be responsible for and make good to the Authority all financial losses which may be reasonably incurred or suffered by the Authority by reason of the construction, maintenance or operation of the works or the failure thereof or by reason of any act or omission of the Company, their employees, contractors or agents or others whilst engaged upon the construction or maintenance of the works or dealing with any failure of such works.

(2) The Company shall indemnify the Authority from and against all claims and demands arising out of or in connection with the works or any such failure, act or omission; and the fact that any act or thing may have been done by the Authority on behalf of the Company or by the Company, their employees, contractors or agents with plans or particulars submitted to or modifications or conditions specified by the Authority, or in a manner approved by the Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Authority or its duly authorised representative, employee, contractor or agent) excuse the Company from liability under the provisions of this sub-paragraph.

(3) The Authority shall give the Company reasonable notice of any such loss, claim or demand as is referred to in sub-paragraphs (1) and (2), and no settlement or compromise thereof shall be made without the prior consent of the Company.

11. Any difference between the Company and the Authority arising out of any of the provisions of this Part of this Schedule 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.

PART 2

PROTECTION FOR THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) In this Part of this Schedule—

"accumulation" means any accumulation of silt or other material;

"the Agency" means the Environment Agency;

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

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" shall be construed accordingly;

"damage" includes scouring and erosion and "damaged" shall be construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment, outfall

or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"erosion" means any erosion of the bed or shore of the sea or of the bed or banks of any river;

"the fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

"outfall" means—

(a) any existing land drainage outfall for which the Agency is responsible;

(b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

"plans" includes sections, drawings, specifications and method statements;

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

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

2.—(1) Before beginning to construct any specified work, the Company shall submit to the Agency for its approval plans of the work and such further particulars available to them as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any approval of the Agency required under this paragraph—

(a) shall not be unreasonably withheld;

(b) shall be deemed to have been given if, within 42 days of the submission of the plans for approval, it is neither—

(i) given in writing, nor

(ii) refused in writing (the refusal being accompanied by a statement of the grounds for refusal within 42 days of the submission of the plans for approval); and

(c) may be given subject to such reasonable conditions as the Agency may impose in the discharge of its environmental and recreational duties for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution, or in the discharge of its environmental and recreational duties.

3. Without prejudice to the generality of paragraph 2 but subject to paragraph 13, the conditions which the Agency may impose under paragraph 2 include—

(a) conditions as to the time and the manner in which any work is to be carried out; and

(b) conditions requiring the Company at their 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 or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) 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 reason of any specified work.

4.—(1) Subject to sub-paragraph (2)—

(a) any specified work, and all protective works required by the Agency under paragraph 2(2)(c), shall be constructed within such period (if any) as the Agency may specify at the time when it gives its approval under paragraph 2, or may approve at any later time on application by the Company (such approval not to be unreasonably withheld);

(b) any specified work shall be constructed in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule and in accordance with any conditions imposed under paragraph 2; and

(c) any protective works required by the Agency under paragraph 2(2)(c) 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.

(2) The Company shall give to the Agency not less than 14 days' notice in writing of their intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of the specified works or any protective work of a type described in paragraph 3(b)(ii) comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the Company at the Company's own expense to comply with the requirements of this Part of this Schedule or (if the Company so elect and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down that work and, in the case of removal, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the Company, they have failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and may recover any expenditure reasonably incurred by it in so doing from the Company.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Before commencing the construction of a specified work the Company shall procure at their expense in liaison with and to the reasonable satisfaction of the Agency a survey of any drainage work liable to be affected by that specified work.

(2) Subject to sub-paragraph (3), the Company shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Company or which they otherwise have control of or are in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(3) The obligation imposed on the Company by sub-paragraph (2) does not apply where the Agency or another person other than the Company is liable to maintain the drainage work in question and is not precluded by the exercise of the powers of this Order from doing so.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Company to repair and restore that drainage work, or any part thereof, or (if the Company so elect and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the drainage work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(5) If within a reasonable period, being not less than 28 days beginning with the date on which a notice under sub-paragraph (4) is served on the Company, they have failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter complete them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

6.—(1) If, during the construction of a specified work or within 10 years after the completion of any such work and wholly or partly in consequence of its construction, there is caused or created an accumulation or erosion which causes damage, the Company shall, if so required by the Agency before or within the period of 10 years after such completion, remedy such accumulation or erosion, in the manner specified in sub-paragraph (4), and, if they refuse or fail so to do, the Agency may itself cause work to be done and may recover the reasonable cost thereof from the Company.

(2) Should any accumulation or erosion, in consequence of such construction, arise within the said period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction.

(3) In sub-paragraphs (1) and (2), "damage" means any damage to the bed or banks of the river 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.

(4) For the purposes of sub-paragraphs (1) and (2)—

(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, 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,

any such protective works being subject to paragraph 13.

(5) In the event that surveys, inspections, tests or sampling establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

7. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency; and if the Company fail to do so within such reasonable period as the Agency may require by notice in writing to the Company, the Agency may make good the same and recover from the Company the expense reasonably incurred by it in so doing.

8.—(1) The Company shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work;

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve a written notice on the Company requiring them to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of a notice under sub-paragraph (2), the Company fail to take such steps as are described in the notice, the Agency may take those steps and may recover from the Company the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Company the reasonable cost of so doing provided that notice specifying those steps is served on the Company as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

9. The Company shall indemnify the Agency in respect of all reasonable and proper 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 Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

10.—(1)Without prejudice to the other provisions of this Part of this Schedule, the Company shall indemnify the Agency against all claims, demands, proceedings, costs, damages, expenses or losses, which may be made or taken against, or recovered from or incurred by the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Company, their contractors, agents or employees whilst engaged upon the specified works.

(2) The Agency shall give to the Company reasonable notice of any such claim, demand, or proceedings and no settlement or compromise of any such claim, demand, proceedings, costs, damages, expenses or losses shall be made without the consent of the Company which shall not be unreasonably withheld.

11. The fact that any work or thing has been executed or done by the Company 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 relieve the Company from any liability under the provisions of this Part of this Schedule.

12. For the purposes of Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

13.—(1) This paragraph applies in relation to any protective work required by the Agency under this Part of this Schedule ("relevant protective work").

(2) Relevant protective works shall be taken to be works which fall within paragraph (ii) of the proviso to section 19 of the Harwich Harbour Act 1974 (restrictions on works, dredgings and moorings) and, accordingly, to be exempt from the requirement to be licensed under section 20 (licensing of works) of that Act.

(3) Before imposing any requirement of a type referred to in paragraph 3(b)(ii) or 6(4), the Agency shall first consult in writing the Harwich Haven Authority ("the Authority") who may comment in writing (with or without specifying objections) within 21 days of being so consulted;

and the Agency shall within 7 days of receiving such comments from the Authority, provide the Company with a copy of those comments.

(4) Not less than 56 days before commencing the construction of any relevant protective work the Company or the Agency shall supply to the Authority plans of that work.

(5) Whenever plans are submitted to the Authority under sub-paragraph (4) the Company or the Agency shall also submit such further particulars by way of clarification of what is proposed as the Authority may, within 21 days from the day on which the plans are submitted, reasonably require.

(6) The Authority may approve plans submitted to it under sub-paragraph (4) 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 under sub-paragraph (4) (or, where relevant, within 56 days of the provision of any information requested under sub-paragraph (5)) notify the Agency and 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.

(7) A relevant protective work shall not be constructed except in accordance with such plans as may have been approved (conditionally or unconditionally) by the Authority under this Part of this Schedule or deemed to have been approved in accordance with sub-paragraph (6) or settled as provided in paragraph 14.

(8) The Company or the Agency shall give to the Authority not less than 28 days' notice of the commencement of any relevant protective work.

(9) Plans of any relevant protective work which is a tidal work shall not be submitted by the Company to the Secretary of State for approval under article 12 until plans of that work have been approved by the Authority or deemed to have been approved in accordance with sub-paragraph (6) or settled as provided in paragraph 14; and if the Secretary of State requires the alteration of any such plans the Company shall, not less than 28 days before commencing the work, notify the Authority and the Agency of the alteration.

(10) Subject to notification by the Secretary of State in accordance with sub-paragraph (9), if there is any inconsistency between the plans of any relevant protective work which is a tidal work approved or deemed to have been approved in accordance with sub-paragraph (6) or settled under paragraph 14 and the plans approved by the Secretary of State under article 12, the relevant protective work in question shall be constructed in accordance with the plans approved by the Secretary of State.

14. Any dispute arising between the Company and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly.

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 new quay and associated works at Felixstowe. The Order also authorises the Company to carry out subsidiary works. These works will form part of the undertaking of the Company.

The Felixstowe Dock and Railway Act 1988 and the Harwich Harbour Act 1974 are amended by articles 3 and 19 respectively.

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

STATUTORY INSTRUMENTS

2007 No. 3219

HARBOURS, DOCKS, PIERS AND FERRIES

The Felixstowe Dock and Railway Harbour Revision Order 2007

£3.50

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