STATUTORY INSTRUMENTS

2008 No. 230

HARBOURS, DOCKS, PIERS AND FERRIES

The Port of Weston Harbour Revision Order 2008

Made - - - -	*6th February 2008*
Coming into force - -	*27th February 2008*

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SCHEDULE 1 — FOR THE PROTECTION OF WEAVER NAVIGATION
SCHEDULE 2 — PROVISIONS FOR MUTUAL PROTECTION OF WESTLINK HOLDINGS LIMITED AND MANCHESTER SHIP CANAL COMPANY

The British Waterways Board has applied for a harbour revision order under section 14 of the Harbours Act 1964(**a**).

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

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

Citation and commencement

1. This Order may be cited as the Port of Weston Harbour Revision Order 2008 and shall come into force on 27th February 2008.

Interpretation

2.—(1) In this Order—

"BW" means the British Waterways Board;

"the Company" means Westlink Holdings Limited;

"the deposited map" means the plan prepared in triplicate, signed by the Head of the Ports Division in the Department for Transport and marked "Plan referred to in the Port of Weston Harbour Revision Order 2008", of which copies have been deposited at the offices of that Department, the registered office of the Company and the principal office of BW;

"the navigation" means the Weaver navigation;

"the operative date" means the first day after the end of a period of four weeks beginning with the day on which this Order comes into force;

"the Port" means Weston Point Docks (commonly known as the Port of Weston) as defined in article 3 of this Order;

"the port estate" means the piers, jetties, breakwaters, wharves, quays, berths, slipways, roads, bridges, sheds and other conveniences, and the lands, buildings and property of every description and of whatever nature which, immediately before the operative date, are vested in, or occupied or administered by, BW for the purposes of or in connection with the Weston Point Docks undertaking of BW and which are transferred by agreement (whether made before or after the coming into force of this Order) from BW to the Company.

(2) In this Order any reference to the undertaking of BW at the Port is a reference to the powers, duties, rights and liabilities of BW, as harbour authority in respect of that undertaking, as they exist immediately before the operative date.

Area of Port

3.—(1) The area within which the Company shall exercise jurisdiction as harbour authority, within the meaning of section 57 of the Harbours Act 1964, for the Port shall be the area described in paragraph (3), and shown edged in red on the deposited map, together with so much of the port estate as is not situated within that area.

(**a**) 1964. c.40; section 14 and Schedule 3 were amended by the Transport Act 1981(c.56), section 18 and Schedule 6, 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. *See* also the Criminal Justice Act 1982, section 37 and 46.

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

(**c**) S.I. 1981/238.

(2) In the event of any discrepancy between the description of the area of the Port referred to in paragraph (1), and set out in paragraph (3), and the boundaries shown on the deposited map, the deposited map shall prevail over the said description.

(3) The area referred to in paragraph (1) is the existing Port of Weston in the Borough of Halton situated where the Manchester Ship Canal meets the navigation.

Establishment of Company as harbour authority for the Port, etc.

4. On the operative date the Company shall become the harbour authority for the Port and BW shall cease to be the harbour authority for the Port.

Duties and powers of Company in respect of the Port

5.—(1) On and from the operative date the Company shall have in respect of the Port all the duties and powers imposed or conferred on BW in respect of the Port by any provision of the River Weaver Navigation Acts 1721 to 1945 relating to the Port and in force immediately before that date, and on that date BW shall cease to have any such duties or powers in respect of the Port.

(2) In consequence of paragraph (1), on and from the operative date any statutory provision of local application or document whatsoever (other than a document referred to in article 7(1)) shall, so far as it relates to the Port, have effect (except where the context otherwise requires and subject to any necessary modifications) as if, for any reference however worded and whether express or implied—

(a) to BW, there were substituted a reference to the Company; and

(b) to any officer or servant of BW, there were substituted a reference to the officer or servant of the Company who corresponds as nearly as may be to the first-mentioned officer or servant.

(3) Paragraph (2) does not apply to any provision of the British Waterways Acts 1963 to 1995.

(4) Without prejudice to the generality of paragraph (2), on and from the operative date any provision in the Manchester Ship Canal Acts and Orders 1885 to 1992 for the protection or benefit of BW or any predecessor of BW shall, so far as it relates to the Port, have effect as if, for any reference to BW or any predecessor of BW, there were substituted a reference to the Company.

(5) Paragraphs (2) and (4) do not apply to paragraphs (10) and (22) of section 71 (for the protection of the Trustees of the River Weaver Navigation) of the Manchester Ship Canal Act 1885(**a**) which on the operative date shall cease to apply to the Port; but nothing in this Order shall affect the application of the said paragraphs (10) and (22) in relation to the navigation or any part of the undertaking of BW which is not transferred by this Order to the Company.

(6) On and from the operative date section 50 of, and Schedule 9 to, the Transport Act 1962(**b**)shall cease to apply to the Port.

Byelaws, etc.

6.—(1) The Company may make byelaws for the Port for the purposes mentioned in section 83 of the Harbours, Docks and Clauses Act 1847(**c**), and that section is hereby incorporated in this order.

(2) On and from the operative date any byelaw, regulation, licence or consent made, issued or granted by BW in relation to the Port and in force immediately before that date shall, notwithstanding the making of this Order, continue in force and be deemed to have been made, issued or granted by the Company.

(3) Subsections (3), (4), (5) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972(a) (which relate to the procedure for making, and evidence of, byelaws)

(**a**) 1885 c. clxxxviii.
(**b**) 1962 c.46.
(**c**) 1847. c.27.

shall apply to any byelaws made by the Company by virtue of this article as if the Company were a local authority and the secretary of the Company were a proper officer of a local authority; but, subject to paragraph (4), the Secretary of State may confirm the byelaws with such modifications as she thinks fit.

(4) Where the Secretary of State proposes to make a modification which appears to her to be substantial, she shall inform the Company and require it to take any steps she considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as she thinks reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

Saving of agreements, etc

7.—(1) In this article "document" means any sale, conveyance, lease, grant, assurance, deed, contract, bond, agreement, notices or demand.

(2) Subject to paragraphs (3) and (4), any document affecting the undertaking of BW at the Port and in force immediately before the operative date shall (in so far as it relates to that undertaking) on and from that date be as binding and of as full force and effect as respects anything occurring or falling to be done on or after the operative date, and may be enforced as fully and effectively against or in favour of the Company, as if the Company instead of BW had been a party thereto or bound thereby or entitled to the benefit thereof.

(3) Paragraph (2) does not apply to any document the parties to which include both BW and the Company.

(4) Nothing in paragraph (2)—

(a) shall transfer from BW to the Company any liability of BW (including any liability in damages) incurred or arising prior to the operative date or relating to events, acts or omissions which took place prior to the operative date; or

(b) shall have the effect of transferring from BW to the Company any interest in any land.

Continuance of proceedings

8. Nothing in this Order shall release, discharge or suspend any action, arbitration or other proceeding, or any cause of action, arbitration or other proceeding, pending or existing immediately before the operative date—

(a) by, in favour of, or against BW; or

(b) by, in favour of, or against the Company as agent for BW,

in relation to the undertaking of BW at the Port, and any such action, arbitration or other proceeding or cause of action, arbitration or other proceeding may be maintained, prosecuted or continued by or in favour of or against BW or, in the case of paragraph (b), the Company.

Restriction on levying certain dues

9.—(1) Notwithstanding anything in any enactment, but subject to paragraph (3), the Company shall not impose any due or charge in respect of any vessel to which this article applies, or any passengers or goods on board any such vessel.

(2) This article applies to any vessel exercising the rights of access referred to in section 27 of the British Waterways Act 1995(**a**), and article 10 of this Order, or otherwise in transit on the navigation.

(3) This article shall not preclude the Company from imposing dues or charges in respect of vessels which moor or remain within the Port, or in respect of goods or passengers on, or services or facilities provided by the Company in relation to, any such vessel.

(**a**) 1995 c.i.

Access for vessels through Port

10.—(1) The Company shall ensure that vessels may at all times use the Port as a means of access between any two or more areas of water adjoining or in the vicinity of the Port.

Protection of Weaver navigation

11. Schedule 1 to this Order shall have effect.

Mutual protection of Company and Manchester Ship Canal Company

12. Schedule 2 to this Order shall have effect.

Signed by authority of the Secretary of State for Transport

R C Bennett
Heads of Ports Division
Department for Transport

6th February 2008

SCHEDULE 1

Article 11

FOR THE PROTECTION OF WEAVER NAVIGATION

1. In this Schedule —

"the 1968 Act" means the Transport Act 1968(**a**);

"the channel" means so much of the main navigable channel of the navigation as is situated within the Port; and

"the duty" means the duty imposed on BW by section 105(1)(a) of the 1968 Act to maintain the channel in a suitable condition for use by commercial freight-carrying vessels.

2. Notwithstanding any other provision of this Order, but subject to the following provisions of the Schedule, on and from the operative date —

(a) the channel shall remain a commercial waterway for the purposes of the 1968 Act; and

(b) BW shall continue to be subject to the duty.

3. BW and the Company may enter into and carry into effect arrangements whereby the Company maintain and manage the channel to such a standard as is sufficient to ensure compliance with the duty.

4. BW shall not be required to maintain and manage the channel or do any other things in fulfilment of the duty for so long as the duty is being fulfilled by the Company in accordance with arrangements made under paragraph 3.

5. Nothing in this Schedule shall affect the powers of the Secretary of State to alter the duty by order made under section 105(3) of the 1968 Act, and following the making of any such order the foregoing provisions of this Schedule shall apply to the duty as so altered.

(**a**) 1968 c.73.

SCHEDULE 2

Article 12

PROVISIONS FOR MUTUAL PROTECTION OF WESTLINK HOLDINGS LIMITED AND MANCHESTER CANAL COMPANY

1. For the mutual protection of the Company and the Manchester Ship Canal Company ("MSC") the following provisions shall, unless otherwise agreed in writing between the Company and MSC, apply and have effect on and from the operative date.

2. In this Schedule–

"detriment" means–

(a) damage caused by the execution or failure of any of the owner's specified works to the specified works of the other company; or

(b) any act or omission of the owner, or of any persons in its employ, or of its contractors which interferes with the undertaking of the other company or which interferes with traffic on the Manchester Ship Canal or the navigation, or which causes or occasions any costs, charges, damages, expenses or losses to the other company other than in the lawful and proper exercise of its powers as a statutory harbour authority;

"the other company" means the Company or MSC, as the case may require;

"the owner" means the Company or MSC as the case may require;

"specified works" means, as the case may require–

(a) any works owned by the Company and authorised by the River Weaver Navigation Acts 1721 to 1945 or any works to the Port that may be carried out and owned by the Company following the making of this Order; or

(b) any works owned by MSC and authorised by the Manchester Ship Canal Acts and Orders 1885 to 1992 or any works that may be authorised and carried out by MSC pursuant to any future Act or Order.

3. If as a result of the execution or failure of any specified works or of any act or omission of the owner or any persons in its employ, or of its contractors, damage or other detriment is caused, the owner (if so required by the other company) shall make good such damage and shall pay to the other company all reasonable expenses to which the other company may be put, and compensation for any loss which the other company may sustain, in making good or otherwise by reason of the detriment.

4. The owner shall be responsible for and make good to the other company all costs, charges, damages, expenses and losses which may be occasioned to or reasonably incurred by the other company as a result of any detriment, and subject to paragraph 5 below the owner shall effectively indemnify and hold harmless the other company from and against all claims and demands arising out of or in connection with any detriment.

5. The other company shall give the owner reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the owner.

6. Any difference arising between the Company and MSC under this Schedule (other than a difference as to the meaning or construction of this Schedule) 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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates Westlink Holdings Limited as the harbour authority for Weston Point Docks (commonly known as the Port of Weston) in place of the British Waterways Board ("BW").

The Order also contains provisions conferring upon Westlink Holdings Limited certain of the statutory functions hitherto exercised by BW in respect of the Port, and makes related provisions. The Order safeguards existing rights of access for vessels through the Port.

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The Port of Weston Harbour Revision Order 2008

£3.00

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E1923 2/2008 181923T 19585

