1988 No. 1928

HARBOURS, DOCKS, PIERS AND FERRIES

The Sutton Harbour Revision Order 1988

Made - - - -	*27th October 1988*
Coming into force -	*28th October 1988*

The Secretary of State for Transport in exercise of the powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf, and on the application of the Sutton Harbour Company, hereby makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Sutton Harbour Revision Order 1988 and shall come into force on 28th October 1988.

(2) The Sutton Harbour Acts and Orders 1847 to 1986 and this Order may be cited together as the Sutton Harbour Acts and Orders 1847 to 1988.

Incorporation of Harbours, Docks and Piers Clauses Act 1847

2.—(1) The provisions of the Harbours, Docks and Piers Clauses Act 1847(c) (except sections 6 to 23, 25, 26, 48, 49, 50, 95, 97, 98 and 101) are hereby incorporated with this Order:

Provided that in construing the provisions so incorporated–

(a) the expression "special Act" shall mean this Order, the expression "company" shall mean the Company, the expression "the harbour, dock or pier" shall mean the Harbour as defined by the Sutton Harbour Act 1847(d) and "the prescribed limits" shall mean the limits of the Harbour as so defined;

(b) section 52 shall extend to empower the harbour master of the Company to give directions prohibiting the mooring of vessels within the harbour, dock or pier;

(c) section 53 shall not be construed to require the harbour master of the Company to serve a notice in writing of his directions upon the master of a vessel but such directions may be given orally or otherwise communicated to such master, provided that a notice which is not in writing shall not be deemed to be sufficient unless in the opinion of the court before whom any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel;

(d) section 63 shall have effect as if for the words from "liable to" to the end of the section there were substituted the words "guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400";

(a) 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56) section 18 and Schedule 6 paragraphs 2 to 4.
(b) S.I. 1981/238.
(c) 1847 c.27.
(d) 1847 c.ccxcvii.

(e) section 69 shall have effect as if for the words from "forfeit" to the end of the section there were substituted the words "be liable on summary conviction to a fine not exceeding £400";

(f) for the purposes of section 85 the confirming authority shall be the Secretary of State who may confirm or refuse to confirm any byelaw submitted for confirmation or confirm the same with such modifications as he sees fit.

(2) The provisions of the Harbours, Docks and Piers Clauses Act 1847 as incorporated with any of the Sutton Harbour Acts and Orders 1847 to 1986 shall from and after the coming into operation of this Order be construed as applied, extended, amended or varied by or by virtue of this Order.

Interpretation

3. In this Order, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:–

"the Company" means the Sutton Harbour Company;

"the deposited plan" and "the deposited section" means the plan and section prepared in triplicate, signed by an Assistant Secretary of the Department of Transport and marked "Plan and section referred to in the Sutton Harbour Revision Order 1988" of which two copies are deposited at the offices of the Department of Transport and one copy at the offices of the Company;

"the harbour" means the harbour of Sutton Pool in the port of Plymouth being the Harbour defined in the Sutton Harbour Act 1847;

"the level of high water" means the level of mean high water springs;

"the limits of deviation" means the limits of deviation shown on the deposited plan;

"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;

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

"the undertaking" means the undertaking of the Company as for the time being authorised by any enactment;

"the works" means the works authorised by article 4 (Power to construct works) of this Order and any works constructed under article 5 (Subsidiary works) of this Order and includes those works as renewed, extended, enlarged or altered, and "work" shall be construed accordingly.

Power to construct works

4.—(1) Subject to the provisions of this Order, the Company may when they have acquired the necessary lands or obtained sufficient interests therein and within the limits of deviation construct and maintain the following works in the harbour, that is to say:–

A quay of solid or open construction in steel, timber or concrete, including a strengthening or reconstruction of Bayly's Wharf, commencing by a junction with the north side of the East Pier at a point 22 metres or thereabouts measured from its western extremity, thence proceeding first in a northerly and thereafter in an easterly direction along the face of Bayly's Wharf and terminating at the eastern extremity of that Wharf.

(2) Subject to the provisions of this Order, the Company may within the limits of deviation for the works extend, enlarge, alter, replace or relay the same.

(3) The Company may by means of the works enclose and reclaim from the foreshore and bed of the sea and may hold and use as part of the undertaking so much of the foreshore and bed of the sea as is situate within the limits of deviation and is required for or in connection with the works.

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

Subsidiary works

5. Subject to the provisions of this Order, the Company may within the limits of deviation from time to time erect, construct and maintain, whether temporarily or permanently, all such works, buildings and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works.

Power to deviate

6. The Company in constructing the works may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited section to such extent upwards or downwards as may be found necessary or convenient.

Obstruction of works

7. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works or who moves any pole, stake, station point or bench mark established for the purpose of such setting out without reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.

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

8.—(1) A tidal work shall not be erected, constructed, renewed, extended, enlarged or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is erected, constructed, renewed, extended, enlarged or altered in contravention of this article or of any condition or restriction imposed under this article–

(a) the Secretary of State may by notice in writing require 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 comply with the requirements of the notice the Secretary of State may execute the works specified in the notice; or

(b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Provision against danger to navigation

9.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Company shall forthwith notify the Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Trinity House shall from time to time direct.

(2) Subject to the provisions of article 15 (Defence of due diligence) of this Order, if the Company fail to notify the Trinity House as required by this article or to comply in any respect with a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

10.—(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 the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State may think 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 with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

Survey of tidal works

11. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work constructed by the Company 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.

Lights on tidal works during the construction

12.—(1) The Company shall at or near a tidal work during the whole time of the erection, construction, renewal, extension, enlargement or alteration thereof exhibit every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) Subject to the provisions of article 15 (Defence of due diligence) of this Order, if the Company fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

Permanent lights on tidal works

13.—(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 for the prevention of danger to navigation as the Trinity House shall from time to time direct.

(2) Subject to the provisions of article 15 (Defence of due diligence) of this Order, if the Company fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding £2,000 and on conviction on indictment to a fine.

Local inquiries

14. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order and subsections (2) to (5) of section 250 of the Local Government Act 1972(a) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

Defence of due diligence

15.—(a) In proceedings for an offence under any provision of this Order mentioned in sub-paragraph (b) below it shall be 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.

(b) The provisions referred to in sub-paragraph (a) above are–

article 9 (Provision against danger to navigation);

article 12 (Lights on tidal works during construction);

article 13 (Permanent lights on tidal works).

(a) 1972 c.70.

Saving for Trinity House

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

Crown rights

17.—(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 or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)–

(a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

Amendment and repeal

18.—(1) Section 18 (Power to hold fish-market) of the Sutton Harbour Act 1889(a) is hereby amended by the substitution for the words from "the site" to "mentioned" of the words "any lands for the time being forming part of the undertaking of the Company".

(2) Section 31 (Retirement of future Directors not being Nominees) of the Sutton Harbour Act 1847 is hereby repealed and accordingly section 88 (Rotation of Directors) of the Companies Clauses Consolidation Act 1845(b) (rotation of directors) as incorporated with the enactments of the Company shall apply and have effect with respect to the Company.

Costs of Order

19. All costs, charges and expenses of, or in connection with the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay by the Secretary of State or a joint committee of both Houses of Parliament or any costs, charges and expenses incurred in opposing the Order) shall be paid by the Company.

Signed by authority of
the Secretary of State

J. W. S. Dempster
An Under Secretary in the
Department of Transport

27th October 1988

(a) 1889 c.cxcii.
(b) 1845 c.16.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Sutton Harbour Company to construct a sea wall adjacent to the East Pier of the seaward entrance to the harbour of Sutton Pool in the port of Plymouth and to reclaim land as requisite for these works. The Order also makes further provision as to the fish market of the Company at the harbour and for the repeal of certain provisions of the Sutton Harbour Acts and Orders 1847 to 1986.

The applicants for the Order are the Sutton Harbour Company.

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