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STATUTORY INSTRUMENTS

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**2008 No. 1261**

**The London Gateway Port Harbour Empowerment Order 2008**

**PART 3**

**WORKS PROVISIONS**

**Power to construct, etc., works**

**10.**—(1) The Harbour Authority may, in the lines or situations, and within the limits of deviation and according to the levels shown on the deposited plans and the deposited sections, construct, operate and maintain the works set out in Schedule 1, or any of them.

(2) For the purposes of, or in connection with, the works authorised by paragraph (1) the Harbour Authority may do any of the following within the limits of deviation for those works—

- (a) provide, construct and maintain approaches, roads, pavements, bridges (including bridges over watercourses), road and rail crossings, railway tracks, sidings, ramps, buildings, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, substations, signals, conveyors, cranes, lifts, hoists, lighting masts, radio masts, CCTV cameras and masts, security barriers, weighbridges, stairs, ladders, conveyors, stages, platforms, catwalks, equipment, pontoons and gangways, quays, berths, container handling equipment (including overhead bridge cranes), rail mounted gantries, rubber-tired gantries, dredged material and aggregate handling washing and grading equipment, roll-on roll-off ship facilities, bulk liquids facilities, general cargo handling and haulage equipment and stagings, together with all such port, harbour, dock, wharf or terminal facilities (including security installations, tanks and pumps and other apparatus (including all utilities plant, conduit, pipes, wires, cables, substations, pumping stations, foul drainage and sewerage treatment plants, and telecommunications apparatus as is required)), plant, machinery, moorings, hydrodynamic dredging equipment, booms and barriers, outfalls, street lighting and signage as may be necessary or convenient;
- (b) within the area between the lines marked green on Sheets Nos. 216 and 217 of the deposited plans, construct and maintain permanent works within Works Nos. 11 and 12 for the accommodation or convenience of vessels;
- (c) construct, maintain and use apparatus, including mains, sewers, drains, pipes and cables;
- (d) alter the course of, or otherwise interfere with, rivers, streams or watercourses;
- (e) landscape and construct other works to mitigate any adverse effects of the construction, maintenance and operation of the other authorised works; and
- (f) carry out and maintain works for the benefit or protection of persons or premises affected by any of the other authorised works.

(3) For the purposes of, or in connection with the construction, maintenance or use of the authorised works, the Harbour Authority may within the limits of construction activity carry out such construction activity, including the temporary placing of materials, plant or equipment or temporary jetties or the construction of temporary accesses, as may be necessary or expedient.

(4) For the purpose of conveying dredged material from the main channel, and from the manoeuvring, berthing and anchorage sites to the site of Works Nos. 11 to 17 (shown on Sheets Nos. 216 and 217 of the deposited plans) the Harbour Authority may during the construction of Works Nos. 11 to 17 provide and use temporary pipes over, on or under the surface of the river.

(5) The powers of this article are subject to the restrictions set out in Schedule 2.

### **Power to construct, etc., pontoons and jetties**

**11.** The Harbour Authority may within the area of jurisdiction construct and maintain—

- (a) one or more floating pontoons for Ro-Ro use restrained or anchored by piles, extending into the river for a distance not exceeding 60 metres southward of the general line of the quay wall and connected to the shore by a link span;
- (b) up to two jetties comprised within Works Nos. 12 and 24 within the area between the lines marked orange on Sheet No. 217 of the deposited plans and extending into the river no further southward than the general line of the quay wall; and
- (c) a floating pontoon and access gangway located at the western end of the harbour within the area between the lines marked orange on Sheet No. 216 of the deposited plans and adjacent to the proposed quay wall in Works Nos. 11 and 12 (shown on Sheets Nos. 216 and 217 of the deposited plans).

### **Further mitigation and compensation works**

**12.—**(1) The Harbour Authority may carry out and maintain on the land hatched black on Sheet No. 208 (Limits of Amelioration Works) of the deposited plans amelioration works and such landscaping, water management and other works to mitigate the effects of the authorised works including altering the level of the land by no more than 50 metres upwards and 6 metres downwards for conservation and or ecological purposes, embankments and tree planting.

(2) Paragraph (1) is subject to article 16 (tidal works not to be constructed without approval of the Secretary of State) and Schedule 8 but nothing in those provisions shall prevent the undertaking and completion by the Harbour Authority of works necessary to compensate for the effects of the authorised works in accordance with the requirements of the Secretary of State acting as competent authority under the Habitats Directive and the Habitats Regulations.

### **Power to dredge**

**13.—**(1) The Harbour Authority may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore to the extent described in Schedule 3, or as may be required for the purpose of maintaining the works described in Schedule 3.

(2) The power to dredge described in Schedule 3 includes the power to carry out such additional dredging as may be required to provide side slopes or otherwise secure the dredged areas against siltation, scouring or collapse.

(3) Subject to paragraph 22 of Schedule 8, all materials dredged up or removed by the Harbour Authority in exercise of the powers of this article (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(1)) shall be the property of the Harbour Authority and may be used, sold, deposited or otherwise disposed of as the Harbour Authority thinks fit.

(4) No such materials may be deposited on the bed of the river except—

- (a) within the area of jurisdiction, for the purposes of constructing the authorised works; or

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(1) 1995 c. 21.

- (b) in such places and in accordance with such conditions and restrictions as may be prescribed by the Secretary of State pursuant to Part 2 of the Food and Environment Protection Act 1985(2).

#### **Power to deviate**

14.—(1) In constructing and maintaining the works authorised by article 10(1) and in exercising the powers conferred by article 13 (power to dredge), the Harbour Authority may, to the extent of the limits of deviation or, for works authorised by article 13 (power to dredge), to the extent of the limits of deviation for dredging, deviate laterally from the lines or situations of those works shown on the deposited plans.

(2) In constructing and maintaining the works authorised by article 10(1), the Harbour Authority may deviate vertically from the levels of those works shown on the deposited sections to any extent downwards and up to 5 metres upwards.

(3) In exercising the powers conferred by article 13 (power to dredge), the Harbour Authority may deviate vertically to any extent not exceeding one metre downwards.

(4) In constructing so much of the combined footpath and bridleway shown on Sheets Nos. 268 and 269 of the deposited plans as lies between points X and W, the Harbour Authority may deviate laterally from the line shown on the footpath plans by 5 metres in any direction.

(5) In constructing so much of the footpath shown on Sheet No. 272 of the deposited plans as lies parallel to, but 5 metres north of, the definitive alignment of public footpath (part) No.81 in Thurrock, the Harbour Authority may deviate laterally from the line shown on the footpath plans by 2 metres in any direction.

(6) In constructing so much of the bridleway shown on Sheet No. 270 of the deposited plans running from a point 188 metres west of the crossing of footpath 190 (part) of the Thameshaven Branch line in a generally south-westerly, south, south-westerly direction for 1,000 metres to a point 180 metres south of the end of Wharf Road, the Harbour Authority may deviate laterally from the line shown on the deposited plans by 2 metres in any direction.

#### **Fine for obstructing works**

15.—(1) Any person who without reasonable excuse—

- (a) obstructs any person acting under the authority of the Harbour Authority in constructing, maintaining or using the authorised works; or
- (b) interferes with, moves or removes any equipment used in the construction, maintenance or use of the authorised works,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Nothing in paragraph (1) applies to the Harbour Master or to any person acting under the authority of the Harbour Master or the PLA.

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

16.—(1) A tidal work shall not be constructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed in contravention of paragraph (1), the Secretary of State may—

- (a) give notice to the Harbour Authority to remove the tidal work or any part of it and to restore the site of that tidal work to its former condition; or
  - (b) where necessary remove the tidal work or part of it and restore the site of that tidal work to its former condition.
- (3) Notice given under paragraph (2)(a) shall be in writing and shall be served on the Harbour Authority.
- (4) If, within 30 days of service of the notice, the Harbour Authority has failed to comply with the notice, the Secretary of State may—
- (a) execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary to do so, she may remove the tidal work or part of it and restore the site to its former condition.
- (5) Any expenditure incurred by the Secretary of State pursuant to paragraphs (2) to (4) shall be recoverable from the Harbour Authority.
- (6) In considering any application for the Secretary of State's approval under paragraph (1), the Secretary of State shall consult with the PLA and the Environment Agency, both of whom shall provide their opinion on the plans and sections proposed for approval by the Secretary of State within 14 days of being requested to do so by the Secretary of State, and the Secretary of State shall take any such opinion that is received into account.

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

- 17.**—(1) In case of injury to or destruction or decay of a tidal work within the area of jurisdiction the Harbour Authority shall as soon as reasonably practicable—
- (a) notify the PLA; and
  - (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the PLA may from time to time direct.
- (2) If, without reasonable excuse, the Harbour Authority fails to notify the PLA or to act in accordance with any direction given under this article, the Harbour Authority shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Lights on tidal works, etc.**

- 18.**—(1) In the locations specified in paragraph (2), the Harbour Authority shall—
- (a) at the times specified in paragraph (3), exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the PLA may from time to time direct; and
  - (b) provide or afford reasonable facilities (including an electricity supply) for the PLA to provide from time to time (at the Harbour Authority's cost), such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary.
- (2) The locations referred to in paragraph (1) are—
- (a) once a tidal work (other than one authorised under article 13 (power to dredge)) is completed, at or near the outer extremity of that tidal work; and
  - (b) whilst any tidal work is being constructed, at or near appropriate points in relation to that tidal work.
- (3) The times referred to in paragraph (1)(a) are—
- (a) every night from sunset to sunrise; and

(b) at all times when there are conditions of restricted visibility in the vicinity of the tidal work.

(4) The Harbour Authority shall not in the exercise of the powers granted by this Order interfere with the marks, lights and other aids to navigation in the river without the agreement of the PLA and shall ensure access remains available to such aids during and following construction of any tidal work.

(5) Without prejudice to section 133 of the 1968 Act, the Harbour Authority shall comply with the directions of the Harbour Master from time to time with regard to the lights on any tidal work or within the port premises, or the screening of such lights, to ensure that the lights are not a hazard to navigation on the river.

(6) The Harbour Authority shall be liable—

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine,

for a failure to comply with a direction given under this article.

### **Stopping up, diversion, provision and upgrading of footpaths and bridleways**

**19.**—(1) The Harbour Authority may construct new bridleways and new footpaths along the lines shown on the footpath plans.

(2) The Harbour Authority may stop up the parts of the footpaths and bridleway specified in column 1 of Schedule 4 to the extent specified in column 2 of Schedule 4.

(3) No part of any footpath or bridleway specified in column 1 of Schedule 4 may be wholly or partly stopped up under this article unless the new footpath, bridleway or combined footpath and bridleway specified in column 3 of Schedule 4 has been completed to the reasonable satisfaction of the Harbour Authority and opened for public use.

(4) Where a part of a footpath or a part of a bridleway has been stopped up under this article, all rights of way over or along that part of the footpath or bridleway shall be extinguished and the Harbour Authority may appropriate and use the site and soil thereof.

(5) On first opening for public use the substituted rights of way specified in column 3 of Schedule 4 shall become highways maintainable at the public expense.

### **Power to alter layout of streets, etc.**

**20.**—(1) The Harbour Authority may alter the layout of, and carry out other ancillary works in, Rainbow Lane anywhere along its length.

(2) Without prejudice to the powers conferred by paragraph (1) but subject to paragraph (3), the Harbour Authority may for the purpose of constructing or maintaining the authorised works, alter the layout of any street within the limits of deviation and, in particular, may—

(a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;

(b) alter the level of any such kerb, footpath, footway, cycle track or verge; or

(c) make and maintain crossovers, sidings or passing places.

(3) The powers in paragraph (2) shall not be exercised without the consent of the street authority, but such consent shall not be unreasonably withheld or delayed.

### **Power to execute street works**

**21.**—(1) The Harbour Authority may, for the purposes of the authorised works, enter upon so much of any street within the limits of deviation and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
  - (b) place apparatus in the street;
  - (c) maintain apparatus in the street or change its position; and
  - (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (c).
- (2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Temporary stopping up of streets**

**22.**—(1) The Harbour Authority may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The Harbour Authority shall provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the Harbour Authority may exercise the powers of this article in relation to Rainbow Lane and Wharf Road.

(4) The Harbour Authority shall not exercise the powers of this article—

- (a) in relation to a street specified in paragraph (3), without first consulting the street authority; and
- (b) in relation to any other street, without the consent of the street authority, which may attach reasonable conditions to any consent but such consent shall not be unreasonably withheld or delayed.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

### **Agreements with street authorities**

**23.**—(1) A street authority and the Harbour Authority may enter into agreements with respect to—

- (a) the construction of any new street (including any structure carrying the street over or under an authorised work) under the powers conferred by this Order;
  - (b) the strengthening or improvement of any street under the powers conferred by this Order;
  - (c) the maintenance of the structure of any bridge carrying a work over a street;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; and
  - (e) the execution in the street of any of the works referred to in article 21 (power to execute street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Construction of bridges**

24. Any bridge to be constructed under this Order for carrying an authorised work over a highway shall be constructed in accordance with plans and specifications approved by the highway authority for that highway, but such approval shall not be unreasonably withheld or delayed.

### **Level crossings**

25.—(1) The Harbour Authority may construct the authorised works so as to carry them on the level across the public rights of way (both existing and in the future) described in Schedule 4 and across Rainbow Lane and Wharf Road.

(2) The Harbour Authority may provide, maintain and operate at or near any new level crossing such barriers, gates or other protective equipment as the Secretary of State may in writing approve.

(3) The Harbour Authority may in the exercise of the powers of this article alter the level of any highway within the limits of deviation.

(4) The appropriate highway authority may enter into agreements with the Harbour Authority in respect of the construction and maintenance of any new level crossings; and such an agreement may contain such terms as to payment or otherwise as the parties consider appropriate.

(5) Any traffic sign placed pursuant to this article on or near a highway or other road to which the public has access shall be treated for the purposes of section 64(4) of the Road Traffic Regulation Act 1984<sup>(3)</sup> as having been placed as provided by that Act.

(6) In this article “protective equipment” includes lights, traffic signs (within the meaning of section 64(1) of the Road Traffic Regulation Act 1984), manual, mechanical, automatic, electrical or telephone equipment, or other devices.

### **Application of permitted development rights**

26. Schedule 5 shall have effect.

### **Defence to proceedings in respect of statutory nuisance**

27.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(4)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act, if the defendant shows—

- (a) that the nuisance relates to premises used by the Harbour Authority for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works and 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<sup>(5)</sup>; or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.

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

- (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 (summary proceedings by person aggrieved by statutory nuisance)); and

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(3) 1984 c. 27.

(4) 1990 c. 43.

(5) 1974 c. 40.

(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 Harbour Authority for the purposes of, or in connection with, the exercise of the powers conferred by this Order with respect to the authorised works.

(3) The provisions of this article are without prejudice to the application to the authorised works, where relevant, of section 122 of the Railways Act 1993<sup>(6)</sup> (statutory authority as a defence to actions in nuisance, etc.) or any rule of common law having similar effect.

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<sup>(6)</sup> 1993 c. 43.