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STATUTORY INSTRUMENTS

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**1994 No. 1693**

**The North Killingholme Haven  
Harbour Empowerment Order 1994**

**PART I  
PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the North Killingholme Haven Harbour Empowerment Order 1994 and shall come into force on 8th July 1994.

**Interpretation**

2.—(1) In this Order, except where the context otherwise requires—

“A.B. Ports” means Associated British Ports;

“the Company” means Simon Storage Group Limited (which is registered in England and Wales with the number 278815);

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in triplicate signed by an Assistant Secretary in the Department of Transport and marked “Plan and sections referred to in the North Killingholme Haven Harbour Empowerment Order 1994” of which copies are deposited at the offices of the Secretary of State for Transport, the offices of A.B. Ports and the registered office of the Company;

“the Harbour Master” means the harbour master appointed by A.B. Ports under section 5 (Appointment of harbour master) of the British Transport Docks Act 1972<sup>(1)</sup> and includes his deputies and assistants;

“the jetty premises” means the works and the land and premises at any time belonging to, or vested in, the Company and used or set aside for the purposes of, or in connection with, the commercial management and operation of the works;

“level of high water” means the level of mean high-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plan;

“the river” means the river Humber;

“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;

“vessel” means a ship, boat or raft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

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(1) 1972 c. xxxvii.

and includes a hovercraft within the meaning of the Hovercraft Act 1968(2) or any other amphibious vehicle or a seaplane;

“the works” means Works Nos 1 and 2 authorised by article 5 (Power to construct works) of this Order, and any works constructed under article 7 (Subsidiary works) of this Order for or in connection with or subsidiary to either of those works and includes those works as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid under paragraph (2) of the said article 5.

(2) Any reference in this Order to a distance or length in any description of works, powers or land shall be construed as if the words “or thereabouts” were inserted after that reference.

### **Incorporation of Harbours, Docks and Piers Clauses Act 1847**

3.—(1) The Harbours, Docks, and Piers Clauses Act 1847(3) (except sections 6 to 19, 20 to 25, 31, the proviso to section 32, sections 33, 42, 48 to 50, 60 to 63, 66, 67, 73, and 77 to 82), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 69 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(3) The byelaws which the Company may make by virtue of section 83 shall include such byelaws as they think fit for all or any of the following purposes—

- (a) the management, control and regulation of the jetty premises and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the jetty premises;
- (b) the control and regulation of vessels being within the prescribed limits;
- (c) the conduct of persons using or being on the jetty premises and the control or prohibition of smoking by such persons;
- (d) safety precautions to be observed by persons on vessels being within the prescribed limits or persons using or being on the jetty premises.

(4) (a) Section 85 shall have effect as if for the words from “in the prescribed manner” to the end there were substituted the words “by the Secretary of State”.

(b) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972(4) shall apply to any byelaws made by the Company under the said section 85 as incorporated with this Order; and those provisions, in their application to any such byelaws, shall have effect as if the references to a local authority were references to the Company.

(c) Subsection (7) of the said section 236, in its application to any such byelaws, shall have effect as if—

(i) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”; and

(ii) there were added at the end the following proviso—

“Provided that, where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall

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(2) 1968 c. 59.

(3) 1847 c. 27.

(4) 1972 c. 70.

not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Company and by any other persons who have, or are likely to have, been informed of it.”.

- (d) The said section 238, in its application to any such byelaws, shall have effect as if the reference to the proper officer of the authority were a reference to the secretary of the Company.
- (5) In construing the provisions of the said Act of 1847 as incorporated with this Order—
  - (a) the expression “the special Act” means this Order, the expressions “the Promoters of the undertaking” and “the undertakers” mean the Company, and the expression “the harbour, dock or pier” means the works;
  - (b) the expression “the harbour master” means the person appointed by the Company to be the Dockmaster with reference to the works (in this Order referred to as “the Dockmaster of the Company”);
  - (c) the meaning of the word “vessel” as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the Act of 1847;
  - (d) section 52 of the Act of 1847 shall extend to empower the Dockmaster of the Company to give directions prohibiting the mooring of vessels within the prescribed limits;
  - (e) the reference in section 53 of the Act of 1847 to notice of a direction by the harbourmaster served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the Dockmaster of the Company to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

## PART II

### LIMITS OF JURISDICTION

#### **Limits of jurisdiction**

4.—(1) The area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of their Dockmaster shall be exercised shall comprise the jetty premises together with so much of the river as lies within the area of water adjacent to those premises and which is bounded by an imaginary line 100 metres from the works.

(2) The jurisdiction of the Company as a harbour authority and the powers of their Dockmaster conferred under or by virtue of this Order shall be exercised only in relation to vessels going to, moored at or departing from the works and, without prejudice to the generality of the foregoing, shall not be exercised in relation to any vessel navigating or at anchor in the river unless any such vessel is obstructing the approaches to the works.

(3) In case of conflict between any direction given by the Harbour Master and any direction given by the Dockmaster of the Company, the direction of the Harbour Master shall prevail.

## PART III

### WORKS

#### **Power to construct works**

5.—(1) Subject to the provisions of this Order, the Company may, in the lines or situations and within the limits of deviation and according to the levels shown on the deposited sections, make and maintain the works hereinafter described, in the district of Glanford, with all necessary works and conveniences connected therewith—

*Work No. 1*

A fixed jetty of open construction with bearing piles, breasting and mooring structures, ramps and pontoons, and a reinforced concrete and steel platform commencing at point TA 1667020702 and terminating at point TA 1699420291, and having an overall length of 523 metres and an overall width of 104 metres.

*Work No. 2*

An approach bridge to Work No. 1 of open construction with bearing piles and a reinforced concrete and steel platform, commencing at point TA1653220264 and terminating at point TA1678820467, and having an overall length of 327 metres and an overall width of 40 metres.

(2) Subject to the provisions of this Order, the Company may within the limits of deviation reconstruct, renew, alter, extend, enlarge, add to, replace or relay the works and may maintain the same as reconstructed, renewed, altered, extended, enlarged, added to, replaced or relaid.

(3) The points specified in paragraph (1) above are Ordnance Survey National Grid reference points.

#### **Power to deviate**

6. In the construction of the works the Company 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 those works shown on the deposited sections to any extent not exceeding 3 metres upwards and to any extent downwards as may be found necessary or convenient.

#### **Subsidiary works**

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

#### **Period for commencement of works**

8. If the works are not commenced 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.

#### **Works to be within county of Humberside etc.**

9.—(1) So much of the works as are beyond mean low water shall be deemed to be within—

- (a) the county of Humberside;
- (b) the district of Glanford;

- (c) the petty sessional division of Barton on Humber;
- (d) the Ferry electoral division; and
- (e) the Humber ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841<sup>(5)</sup> until the Company have certified in writing to the Director General of Ordnance Survey that the works have been completed.

### **Power to dredge**

**10.**—(1) Subject to article 25 (Crown rights) of this Order, the Company may, for the purposes of constructing and maintaining the works 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 works and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894<sup>(6)</sup>) from time to time dredged by them.

(2) No materials so dredged, other than those dredged for the purpose of constructing the works or filling in and reclaiming from the harbour and foreshore so much of the harbour and foreshore as is situated within the limits of deviation, shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

(3) The Company shall not exercise the powers conferred on them by this article except with the written consent of A.B.Ports (which it shall not unreasonably withhold) and in accordance with such conditions and restrictions as may be reasonably prescribed by A.B.Ports.

### **Obstruction of works**

**11.** Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall for every such offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**12.**—(1) A tidal work shall not be constructed, reconstructed, renewed, added to, extended, enlarged, altered, 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 him before the work is begun.

(2) If a tidal work is constructed, reconstructed, renewed, added to, extended, enlarged, altered, replaced or relaid in contravention of 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 take reasonable steps 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;

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<sup>(5)</sup> 1841 c. 30.

<sup>(6)</sup> 1894 c. 60.

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

### **Lights on tidal works during construction**

**13.—**(1) The Company shall at or near a tidal work during the whole time of the construction, reconstruction, renewal, addition, extension, enlargement, alteration, replacement or relaying thereof or addition thereto, 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 or A.B.Ports or as, failing agreement between them, the Secretary of State shall from time to time direct.

(2) If the Company fail to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **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 A.B.Ports and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A.B.Ports shall from time to time direct.

(2) If the Company fail to notify A.B.Ports as required by this article or to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Abatement of works abandoned or decayed**

**15.—**(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or A.B.Ports 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 or A.B.Ports or as, failing agreement between them, 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 a 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 or A.B.Ports 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 or A.B.Ports may execute the works specified in the notice and any expenditure incurred by him or A.B.Ports in so doing shall be recoverable from the Company.

### **Survey of tidal works**

**16.** If the Secretary of State or A.B.Ports deems it expedient to do so, the Secretary of State or A.B.Ports 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 or A.B.Ports 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 A.B.Ports may from time to time direct.

(2) 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 level 4 on the standard scale.

## **PART IV**

### **MISCELLANEOUS AND GENERAL**

#### **Power to mortgage jetty premises**

18. The Company may mortgage, charge or otherwise encumber the jetty premises.

#### **Power to make charges**

19.—(1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

#### **Further provisions as to byelaws**

20.—(1) The Company shall consult A.B.Ports and the National Rivers Authority not less than three months before making any byelaw under or by virtue of this Order.

(2) The Company shall not under or by virtue of this Order—

- (a) make any byelaw for the control or regulation of vessels not going to, moored at or departing from the works;
- (b) make any byelaw which in the reasonable opinion of the Harbour Master would conflict with any byelaws made by A.B.Ports or with any powers exercisable by A.B.Ports or the Harbour Master for the regulation of navigation in the river; or
- (c) make any byelaw regulating any vessel owned or used by A.B.Ports or regulating the conduct of officers of A.B.Ports whilst in the exercise of their duties as such.

(3) The Company shall not make any byelaw under or by virtue of this Order so as to conflict with any byelaws of the National Rivers Authority.

#### **Local inquiries**

21. 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(7) 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**

- (a) **22.** (1) (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 13 (Lights on tidal works during construction); article 14 (Provision against danger to navigation); article 17 (Permanent lights on tidal works).

(2) If in any case the defence provided by sub-paragraph (a) of paragraph

(1) above 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.

### **Power to remove goods**

**23.**—(1) If any goods are left on or in any part of the jetty premises the Company may require the owner of the goods to remove them, and if the goods are not so removed within six hours after such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store, and such removal shall be carried out at the expense and risk of the owner:

Provided that notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

(2) In this article, "goods" includes vehicles and equipment.

### **Obstruction of officers**

**24.**—(1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions; shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Any person who in giving such information makes a statement which he knows to be false shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **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 herein contained shall authorise any person to take, use, enter upon or in any manner interfere

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(7) Subsection 2 has been amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), Schedule 12, Part III.



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.

### **Saving for Trinity House**

**26.** None of the provisions of this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

### **Protection of interests**

**27.**—(1) The Schedule to this Order shall have effect for protecting the interests of the bodies specified in that Schedule (being bodies who may be affected by other provisions of this Order).

(2) Where under the Schedule to this Order any difference is to be determined by arbitration, the difference shall be referred to, and settled by, a single arbitrator to be agreed between the parties or, in default of 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.

### **Special exemptions**

**28.** Section 5 (Removal of obstructions) of the Humber Conservancy Act 1899<sup>(8)</sup> and section 6 (No erections in Humber below river lines or without license above river lines) of the Humber Conservancy Act 1905<sup>(9)</sup> shall not apply to the works, and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without license of Commissioners) of the said Act of 1905 shall not apply to the exercise by the Company of the powers of article 10 (Power to dredge) of this Order.

Signed by authority of the Secretary of State for Transport

27th June 1994

*J. D. Henes*  
An Under Secretary in the  
Department of Transport

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<sup>(8)</sup> 1899 c. cci.  
<sup>(9)</sup> 1905 c. clxxix.