
STATUTORY INSTRUMENTS

2008 No. 1261

The London Gateway Port Harbour Empowerment Order 2008

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as The London Gateway Port Harbour Empowerment Order 2008 and comes into force on 16th May 2008.

Interpretation

2.—(1) In this Order—

“the 1845 Act” means the Railways Clauses Consolidation Act 1845(1);

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(2);

“the 1961 Act” means the Land Compensation Act 1961(3);

“the 1965 Act” means the Compulsory Purchase Act 1965(4);

“the 1968 Act” means the Port of London Act 1968(5);

“the 1980 Act” means the Highways Act 1980(6);

“the 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(9);

“AOD” means above Ordnance Datum (Newlyn);

“the area of jurisdiction” means the area shown washed green on Sheet No. 209 of the deposited plans;

“the authorised works” means the works and operations authorised by Part 3;

“bridleway”, “footpath”, “highway” and “highway authority” have the same meaning as in the 1980 Act;

“chart datum” in relation to any location, at any time, means the datum level ascertained at that time by reference to the relevant charts;

(1) 1845 c. 20.

(2) 1847 c. 27 (10 & 11 Vict.).

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1968 c. 32.

(6) 1980 c. 66.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) S.I. 1995/418, to which there have been amendments not relevant to this Order.

“the Company” means London Gateway Port Limited, a company limited by shares and incorporated under the Companies Act 1985⁽¹⁰⁾, whose registered number is 4341592;

“conditions of restricted visibility” means any occasion when visibility is less than 0.5 nautical miles;

“construction” includes execution and placing and, in its application to works which include or comprise any operation, means the carrying out of that operation but does not include hydrodynamic dredging or maintenance dredging, and “construct” shall be construed accordingly;

“container vessel” means a vessel which is used for carrying cargo and fitted with fixed or portable cell guides for the carriage of containers;

“the deposited plans” and “the deposited sections” mean, respectively, the plans and sections certified by the Secretary of State as the plans and sections for the purposes of this Order pursuant to article 69 (certification of plans, etc.);

“the Dockmaster” means the dockmaster appointed by the Harbour Authority under this Order;

“dredging” includes hydrodynamic dredging and “dredge” shall be construed accordingly;

“environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by the Harbour Authority to the Secretary of State or the PLA for the purposes of any tidal works approval under article 16 (tidal works not to be constructed without approval of the Secretary of State) or paragraph 2 of Schedule 8;

“the footpath plans” means Sheets Nos. 268 to 272 of the deposited plans;

“functions” includes powers and duties;

“the Habitats Directive” means Council Directive [92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended);

“the Habitats Regulations” means the Conservation (Natural Habitats, &c) Regulations 1994⁽¹¹⁾ (as amended), which implement the Habitats Directive;

“the Harbour Authority” means the Company in its capacity as a harbour authority established by article 8 (jurisdiction of the Harbour Authority);

“the Harbour Master” means a person appointed by the PLA to be a harbour master and includes his deputies and assistants;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“hydrodynamic dredging” means any operation that has the effect of materially increasing the depth of water at a given location by disturbing material in the bed of the river or of the sea so that such material is displaced from the bed of the river or of the sea at that location without being removed from the river or the sea, but does not include operations which keep sediment in flux;

“the limits of construction activity” means the limits of construction activity shown marked “LOC” on the deposited plans;

(10) 1985 c. 6.

(11) S.I. 1994/2716.

“the limits of construction activity for dredging” means the limits of construction activity for the operations authorised by article 13 (power to dredge) and shown marked “LOC(D)” on the deposited plans;

“the limits of deviation” means the limits of deviation shown marked “LOD” on the deposited plans;

“the limits of deviation for dredging” means the limits of deviation for the operations authorised by article 13 (power to dredge) and shown marked “LOD(D)” on the deposited plans;

“the local highway authority” means Thurrock Borough Council acting as a highway authority under the 1980 Act, or any successor body;

“London Gateway Port” means the harbour authorised by this Order within the area of jurisdiction;

“the main channel” means the deep water channel authorised in Dredging Work No.2 in paragraph 2 of Schedule 3;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct, replace, re-lay, renew and update and “maintenance” shall be construed accordingly;

“maintenance dredging” means any dredging operation carried out under article 13 (power to dredge) in order to maintain the areas referred to in Schedule 3 to their respective depths, widths, positions or diameters as set out in that Schedule;

“mean high water level” means the level which is half way between mean high water springs and mean high water neaps;

“the mitigation land” means the land numbered 182 to 184, 191 to 194, 196 to 201 and 203 on Sheets Nos. 273 to 291 of the deposited plans and described in Schedule 12;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985) the holding company of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“personal watercraft” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar-operated linkage system (with or without a rudder at the stern); or
- (b) by the person or persons riding the craft using his or their body weight for the purpose; or
- (c) by a combination of the methods referred to in (a) and (b);

“the PLA” means the Port of London Authority operating under the 1968 Act;

“the PLA limits” means the area defined by the limits set out in paragraph 2 of Schedule 1 to the 1968 Act;

“the planning restrictions plan” means Sheet No. 210 of the deposited plans;

“plans” include sections, elevations, drawings, specifications, programmes and method statements and includes hydraulic information;

“the port premises” means such works, berthing pockets, land and premises as are situated within the area of jurisdiction at any time belonging to, vested in or occupied by the Harbour Authority and used, intended to be used or set aside for the purposes of, or in connection with, the commercial management and operation of the authorised works or of the undertaking;

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected therewith and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“Rainbow Lane” means the street of that name in Stanford-le-Hope, Thurrock;

“reference point” means an Ordnance Survey National Grid reference point;

“the related development” means the proposed London Gateway Commercial and Logistics Centre given outline planning permission by the Secretary of State on 30 May 2007 following an application made in 2002 and given registration reference TH/02/00084/OUT;

“the relevant charts” means, at any time, the Admiralty Chart for the Thames Estuary numbered 1183 and the Admiralty Chart for the River Thames Canvey Island to Tilbury numbered 1186, as published by the United Kingdom Hydrographic Office from time to time, or any amendment, replacement or recognised substitute of those charts as published by the United Kingdom Hydrographic Office or any successor body;

“the river” means the River Thames;

“Ro-Ro use” means the provision of services and facilities within the port premises for roll-on roll-off ships to load and unload their cargo;

“ship dues” means charges in respect of any vessel for entering, using or leaving London Gateway Port, including charges in respect of marking or lighting London Gateway Port;

“the street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tidal work” means so much of any permanent or temporary authorised work as is, or may be on, in, under or over the surface of land below mean high water level forming part of the river, but excluding—

- (a) the projection over waters by booms, cranes and similar plant or machinery operating within the area of jurisdiction;
- (b) any work or operation, other than maintenance dredging, necessary to maintain or to return any tidal work to the condition or state to which such tidal work has previously been carried out pursuant to this Order;
- (c) any maintenance dredging; and
- (d) any operation under section 252 of the Merchant Shipping Act 1995⁽¹²⁾ or under section 56 of the 1847 Act as incorporated by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847);

and a work ceases to be a tidal work when the land on which it is situated ceases to be below mean high water level;

“the tribunal” means the Lands Tribunal;

“the Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the harbour undertaking of the Harbour Authority established within the area of jurisdiction by this Order;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and is at the time in, on or over water; and

“Wharf Road” means the street of that name in Stanford-le-Hope, Thurrock.

(2) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order or any part of such work.

(12) 1995 c. 21.

(3) Any reference to a point identified by a letter or coordinates reference shall be construed as a reference to a point identified by that letter or coordinates reference on the deposited plans.

(4) This Order shall be read as if the words “or thereabouts” were inserted after each situation, direction, distance, point, length, area or dimension or other measurement stated in it.

(5) Where in this Order a period is stated to be from a specified day, the first day of the period is the day after the day so specified.

(6) Any vessel shall be a ship for the purposes of the application of the 1964 Act to the undertaking.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) The 1847 Act (except sections 6 to 23, 25, 31, the proviso to section 32, sections 42, 45, 48 to 50, 60 to 63, 66 to 68, 73, 77 and 79 to 83) is hereby incorporated in this Order subject to the modifications stated in paragraphs (2) and (3) and in articles 37 (recovery and enforcement of charges) and 40 (disputes concerning rates).

(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) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the Harbour Authority;
- (c) the expression “the harbour, dock or pier” means the authorised works within the area of jurisdiction;
- (d) the expressions “limits” and “prescribed limits” mean the area of jurisdiction;
- (e) the expression “near the pier” does not extend beyond the area of jurisdiction;
- (f) the expression “the harbour master” means, in relation to the authorised works, the Dockmaster;
- (g) the definition of “vessel” in article 2(1) shall be substituted for the definition in section 3 of the 1847 Act;
- (h) section 53 of the 1847 Act shall not be construed as requiring the Dockmaster to serve written notice upon the master of a vessel and directions given under that section may be communicated to the vessel master orally or otherwise; and
- (i) any requirement to comply with a notice or direction given by the Dockmaster shall be construed as including a requirement that, in complying with such notice or direction, a person who is subject to the notice or direction shall also comply with any relevant notice or direction given by the PLA or the Harbour Master in the exercise by either or both of them of any function conferred by or under any enactment (including this Order).

Byelaws

4.—(1) The Harbour Authority may make such byelaws as it thinks fit for the efficient management and regulation of London Gateway Port, including byelaws for all or any of the following purposes—

- (a) the management, control and regulation of the area of jurisdiction and of goods, wares, merchandise and vehicles within it;
- (b) the control and regulation of vessels within the area of jurisdiction or such lesser area as the Harbour Authority thinks fit;

- (c) the conduct of persons within the area of jurisdiction;
- (d) safety precautions to be observed by persons within the area of jurisdiction, whether or not on board vessels; and
- (e) the protection and conservation of flora and fauna and other natural features, including byelaws—
 - (i) prohibiting the placing of vessels on land dedicated or designated under article 47 (conservation);
 - (ii) prohibiting fishing or bait digging on such land; or
 - (iii) regulating the control of animals on such land or on land of the Harbour Authority.

(2) Section 85 of the 1847 Act as incorporated in this Order by article 3 (incorporation of the Harbours, Docks and Piers Clauses Act 1847) shall have effect as if for the words from “in the prescribed manner” to the end of the section there were substituted the words “by the Secretary of State”.

(3) The Harbour Authority shall not make any byelaw so as to conflict with any byelaw made by the PLA, or with any general direction to vessels given by the PLA or the Harbour Master acting under any enactment. In the case of conflict between—

- (a) a byelaw made by the Harbour Authority; and
- (b) a byelaw made, or direction given, by the PLA or the Harbour Master,

the byelaw or direction of the PLA or of the Harbour Master shall prevail.

(4) In the case of any conflict between byelaws made by the Harbour Authority and byelaws made by Network Rail in respect of railway property, the byelaws of Network Rail shall, in respect of that railway property, prevail.

Application of the Local Government Act 1972

5. The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972(13) shall apply to any byelaws made by the Harbour Authority, subject to the following modifications—

- (a) references to a local authority shall have effect as if they were references to the Harbour Authority;
- (b) references to proper officer shall have effect as if they were a reference to a Director or the Company Secretary of the Harbour Authority;
- (c) the following subsection shall be substituted for section 236(3A)—

“(3A) No byelaws shall be made in accordance with subsection (3) unless the Harbour Authority has, not less than three months before making those byelaws, consulted the PLA and the Environment Agency.”;
- (d) subsection 236(7) shall have effect as if—
 - (i) at the beginning of that subsection, there were inserted the words “subject to subsection (7A)”;
 - (ii) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”;
- (e) the following subsection is treated as having been inserted after section 236(7)—

“(7A) Where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, he shall inform the Harbour Authority and require it to

notify the PLA and take any other steps which he considers to be necessary for informing persons likely to be concerned with the modification and he shall not confirm the byelaw until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification.”.

Application of the New Roads and Street Works Act 1991

6.—(1) Any of the authorised works executed under this Order in relation to a highway which consists of or includes a carriageway shall be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by sections 64 (dual carriageways and roundabouts) or 184 (vehicle crossings) of the 1980 Act.

(2) The following provisions of the 1991 Act shall not apply in relation to any works executed under the powers of this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 58A (restriction on works following substantial street works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing, etc., of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4) which, together with other provisions of that Act, apply in relation to the execution of street works, and any regulations made or code of practice issued or approved under those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street of a temporary nature by the Harbour Authority under the powers conferred by this Order whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act referred to in paragraph (3) are—

- section 54 (advance notice of certain works), subject to paragraph (5);
- section 55 (notice of starting date of works), subject to paragraph (5);
- section 57 (notice of emergency works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 75 (inspection fees);
- section 76 (liability for cost of temporary traffic regulations); and
- section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) shall have effect as if references in section 57 of the 1991 Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) References in Part 3 of the 1991 Act to the undertaker shall be construed as references to the Harbour Authority.

Incorporation of the Railways Clauses Consolidation Act 1845

- 7.—(1) The following provisions of the 1845 Act shall be incorporated in this Order—
- section 24 (obstructing construction of railway);
 - section 46 (crossings of roads-level crossings), subject to paragraph (3);
 - section 47 (provision in cases where roads are crossed on a level);
 - section 58 (company to repair roads used by them), subject to paragraph (4);
 - section 61 (company to make sufficient approaches and fences to highways crossing on the level);
 - section 68 (accommodation works by company);
 - section 71 (additional accommodation works by owners), subject to paragraph (5);
 - sections 72 and 73 (supplementary provisions relating to accommodation works), subject to paragraph (6);
 - section 75 (omission to fasten gates);
 - section 77 (presumption that minerals excepted from acquisition of land);
 - sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(14);
 - section 105 (carriage of dangerous goods on railway); and
 - section 145 (recovery of penalties).
- (2) In those provisions, as incorporated in this Order—
- “the company” means the Harbour Authority;
 - “the goods” includes anything conveyed on the railways authorised to be constructed by this Order;
 - “prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;
 - “the railway” means any railway authorised to be constructed by this Order and, except where the context otherwise requires, any other authorised works; and
 - “the Special Act” means this Order.
- (3) In section 46 of the 1845 Act, as incorporated in this Order, for the proviso there shall be substituted the words “provided always that, subject to such conditions as the highway authority may reasonably impose, the railway may be carried across a highway on the level”.
- (4) In section 58 of the 1845 Act, as incorporated in this Order, for the words from “the determination of two justices” to the end there shall be substituted the word “arbitrations”.
- (5) In section 71 of the 1845 Act, as incorporated in this Order, the words “or directed by such justices to be made by the company” shall be omitted, and for the words “authorised by two justices” there shall be substituted the words “determined by arbitration”.

(6) Any difference arising under section 72 of the 1845 Act, as incorporated in this Order, shall be referred to arbitration under article 66 (arbitration).