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STATUTORY INSTRUMENTS

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**2014 No. 2933**

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014

*Made* - - - - *5th November 2014*  
*Laid before Parliament* *11th November 2014*  
*Coming into force* - - *3rd December 2014*

Associated British Ports, as harbour authority for Fisher Fleet Quay in King’s Lynn, have applied in accordance with section 14(2)(a) of the Harbours Act 1964(1) (“the Act”) for a harbour revision order under section 14 of the Act.

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(2) made under section 42A of the Act(3) delegated the functions of the appropriate Minister under section 14 of the Act(4) to the Marine Management Organisation(5).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) of the Act and in exercise of the powers conferred by section 14(1), (2A) and (3), makes the following Order.

**Citation and commencement**

1. This Order may be cited as the Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014 and comes into force on 3rd December 2014.

**Interpretation**

2. (1) In this Order—

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- (1) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II); by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1; by S.I. 2006/1177, regulation 2 and the Schedule (Part 1); by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9; by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12; and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedule 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).
- (2) See S.I. 2010/674.
- (3) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23) section 315 and Schedule 21, paragraphs 1 and 3(1).
- (4) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (5) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(6);

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

“the deposited plans” and “the deposited sections” mean respectively the plans and sections prepared in triplicate, signed by the Acting Chief Executive Officer of the Marine Management Organisation and marked “Plans and sections referred to in the Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014”, of which one copy is deposited at the offices of the Secretary of State for Transport, one copy is deposited at the principal office of the Marine Management Organisation and the other copy is deposited at the principal office of A.B. Ports;

“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 plans;

“tidal work” means so much of any works 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 works” means the works authorised by this Order.

(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.

(3) All directions, distances, points and dimensions stated in any description of works shall be construed as if the words “or thereabouts” were inserted after each such direction, distance, point or dimension.

### **Power to construct and maintain works**

**3.** (1) A.B. Ports may, in the lines and situations shown on the deposited plans and according to the levels shown on the deposited sections, construct and maintain the following works in the Borough of King’s Lynn and West Norfolk—

#### Work No. 1

A new quay of open construction extending the existing Fisher Fleet quay commencing at reference point 561338E 320906N, then extending into Fisher Fleet in a southerly and then easterly direction and terminating at reference point 561434E 320852N on the existing Fisher Fleet quay;

#### Work No. 2

A new quay of open construction extending the existing Fisher Fleet quay commencing at reference point 561573E 328009N, then extending into Fisher Fleet in a southerly and then westerly direction to reference point 561548E 320804N on the existing Fisher Fleet quay;

#### Work No. 3

A renovation of the existing Fisher Fleet Quay comprising the upgrading of the fabric of the quay (including identifying and repairing defective areas) and installing services to facilitate its use in connection with fishing.

(2) A.B. Ports may, within the limits of deviation, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the works.

(3) The works shall for all purposes form part of the undertaking of A.B. Ports at King’s Lynn as authorised from time to time.

(4) In this article—

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(6) [S.I. 1995/418](#) to which there have been amendments not relevant to this Order.

“the existing Fisher Fleet Quay” means the quay authorised by the King’s Lynn Dock Act 1877(7) and the King’s Lynn Dock Act 1881(8);

“reference point” means Ordnance Survey National Grid reference point.

### **Subsidiary works**

4. (1) A.B. Ports may—

- (a) from time to time within the limits of deviation erect, construct and maintain all such works, conveniences, appliances and apparatus as they from time to time deem necessary or convenient for the purposes of or in connection with or incidental to, the construction, operation and maintenance of the works or the accommodation of vessels thereat;
- (b) in the course of constructing, replacing, altering or reconstructing the works, carry out construction activity, including the temporary placing of plant and equipment, within the waters adjoining the limits of deviation.

(2) In this article “vessel” means every description of vessel, however propelled or moved, including a hovercraft (within the meaning of the Hovercraft Act 1968(9)), a hydrofoil vessel and anything constructed or used to carry persons or goods by water.

### **Power to deviate**

5. In constructing the works A.B. Ports may deviate laterally from the lines or situations shown on the deposited plans and described in article 3 (Power to construct and maintain works) to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to such extent downwards as may be found necessary or convenient.

### **Power to dredge**

6. (1) For the purposes of affording uninterrupted means of access to the works A.B. Ports may from time to time deepen, dredge, scour, cleanse, alter and improve the bed of the Fisher Fleet within the area hatched black on the deposited plans to a maximum depth of 2.027 metres above Chart Datum and may (subject to paragraph (2)) as it thinks fit use, appropriate or dispose of the materials from time to time taken up or collected by it in the course of any such operations.

(2) No materials referred to in this article shall be disposed of in contravention of the provisions of any enactment relating to the disposal of waste.

(3) The power to use, appropriate or dispose of materials referred to in this article shall not extend to wreck (within the meaning of Part IX of the Merchant Shipping Act 1995(10)) found by A.B. Ports.

(4) In this article “Chart Datum” in relation to the depth of dredging is 3.027 metres below Ordnance Datum (Newlyn).

### **Obstructing works**

7. Any person who intentionally obstructs any person acting under the authority of A.B. Ports in carrying out the works or who intentionally or recklessly interferes with equipment or materials used in carrying out the works shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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(7) 1877 c.xvi.

(8) 1881 c.cxxxviii.

(9) 1968 c.59.

(10) 1995 c.21

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

8. (1) In case of injury to, or destruction or decay of, a tidal work or any part thereof, A.B. Ports shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If A.B. Ports fails to notify Trinity House as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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

9. (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require A.B. Ports at its 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 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 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 paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under paragraph (1) is served upon A.B. Ports, it has 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 A.B. Ports as a debt in any court of competent jurisdiction.

### **Survey of tidal works**

10. The Secretary of State may at any time, if he deems it expedient, 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 in any such survey and examination shall be recoverable from A.B. Ports as a debt in any court of competent jurisdiction.

### **Permanent lights on tidal works**

11. (1) After the completion of a tidal work, A.B. Ports must at its outer extremity exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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

12. (1) A.B. Ports must at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension 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) If A.B. Ports fails to comply in any respect with a direction given under paragraph (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Defence of due diligence**

**13.** (1) In proceedings for an offence under articles 8, 11 or 12 it is a defence for A.B. Ports to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, A.B. Ports 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, it has 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 its possession.

#### **Saving for Trinity House**

**14.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

#### **Restrictions on permitted development rights**

**15.** The Schedule has effect.

#### **Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010**

**16.** (1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010<sup>(11)</sup> (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the 1995 Order for the class of development described as permitted development in Part 11 and 17 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works—

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Signed by authority of the Marine Management Organisation

5th November 2014

*A S Beattie*  
Acting Chief Executive Officer  
An authorised employee of the Marine  
Management Organisation

SCHEDULE

Article 15

RESTRICTIONS ON PERMITTED DEVELOPMENT RIGHTS

1. (1) In their application, respectively, to—
  - (a) development authorised by this Order, and
  - (b) development carried out on land which falls to be treated as operational land of a dock or harbour undertaker by virtue of this Order,

article 3 of, and Parts 11 and 17 of Schedule 2 to the 1995 Order shall have effect as if the authority to develop given thereunder were subject to the restriction contained in paragraph 2.

(2) For the purpose of the Town and Country Planning Act 1990<sup>(12)</sup> the restrictions contained in paragraph 2 shall be deemed to be a condition imposed on the grant of planning permission.

2. (1) No works shall commence until a heritage statement for the proposed works has been submitted to and approved by the local planning authority in consultation with English Heritage.

- (2) The statement must include:
  - (a) an assessment of the nature and extent of the historical environment in the area of the proposed works;
  - (b) an assessment of the likely impact (if any) of the proposed works on the historical environment;
  - (c) any proposed measures to mitigate that impact, including any required archaeological field work or watching briefs.

3. (1) No works shall commence until a written scheme of investigation for areas of archaeological interest has been submitted to and approved by the local planning authority in consultation with English Heritage.

- (2) The scheme must include:
  - (a) the scope and methodology for the carrying out of any measures identified under paragraph 2(2)(c);
  - (b) details of the measures required to be taken to protect, record or preserve any significant archaeological remains that may be found.
- (3) Any archaeological field work or watching brief identified under the scheme must be carried out—
  - (a) by a suitably qualified person or body approved by the local planning authority, and
  - (b) in accordance with the approved scheme.

4. In this Schedule “the local planning authority” means the Borough Council of King’s Lynn and West Norfolk.

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(12) 1990 c.8.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order empowers Associated British Ports (“A.B. Ports”) to construct and maintain two quays extending the existing quay in Fisher Fleet, King’s Lynn, Norfolk and to renovate the existing quay (article 3), within the limits of deviation on the deposited plans and sections (defined in article 2(1)) (article 5). The Order confers further powers as to subsidiary works and dredging related to those works (articles 4 and 6).

The Order creates an offence of intentionally obstructing any person carrying out the works, or intentionally or recklessly interfering with equipment or materials used in carrying out the works, with a fine on summary conviction not exceeding level 3 on the standard scale (article 7).

Articles 8 and 9 make provision against danger to navigation and for the abatement of works abandoned or decayed.

The Secretary of State is empowered to order a survey and examination of a tidal work or the site on which it is to be constructed (article 10).

Provision is made for the lighting of tidal works permanently and during construction (articles 11 and 12).

The Order restricts permitted development rights, provided by the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) for the development authorised by the Order, by requiring a heritage statement and a written scheme of investigation for areas of archaeological interest to be approved by the local planning authority prior to the commencement of works (article 15 and the Schedule).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

The deposited plans and sections may be inspected during working hours at the offices of Associated British Ports at 150 Holborn, London EC1N 2LR and at St. Ann’s Fort, King’s Lynn, Norfolk PE30 1QS.