STATUTORY INSTRUMENTS

2017 No. 601

HARBOURS, DOCKS, PIERS AND FERRIES

The Folkestone Harbour Revision Order 2017

Made - - - -	*24th April 2017*
Laid before Parliament	*28th April 2017*
Coming into force - -	*1st August 2017*

Folkestone Harbour Company Limited has 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**) under section 42A of the Act(**3**) delegated the functions of the appropriate Minister under section 14(**4**) to the Marine Management Organisation(**5**).

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Folkestone Harbour Revision Order 2017 and shall come into force on 1st August 2017.

(**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 Schedules 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**) 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.

Interpretation

2.—(1) In this Order—

"the 1991 Order" means the Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991(**6**);

"the Act of 1807" means the Act for constructing a pier and harbour at or near the town of Folkestone in the County of Kent enacted on 25th July 1807(**7**);

"the Act of 1818" means the Act for altering and amending the Act of 1807, and for other purposes, enacted on 19 March 1818(**8**);

"the Act of 1844" means the Act to enable the South-eastern Railway Company to complete and maintain a branch railway and approach to the Harbour of Folkestone, and for other purposes, enacted on 4th July 1844(**9**);

"the Act of 1847" means the Harbours, Docks and Piers Clauses Act 1847(**10**);

"the Act of 1885" means the South Eastern Railway (Various Powers) Act 1885(**11**);

"the Act of 1992" means the Folkestone Harbour Act 1992(**12**);

"the area of works" means the area within the limits of deviation and the revetment working area and the parts of the Inner Harbour and the Outer Harbour in the immediate vicinity of buildings being constructed in accordance with article 4(4);

"the Company" means Folkestone Harbour Company Limited which is registered in England and Wales with the number 02447559;

"the deposited plans", "the deposited sections" and "the deposited map" mean respectively the plans, sections and map (numbered sheets HRO1 to HR05) prepared in duplicate, each signed on behalf of the Marine Management Organisation and marked "Folkestone Harbour Revision Order 2017 Plans, Sections and Map", one copy of which is deposited at the offices of the Marine Management Organisation and the other at the office of the Company at Port Office, Folkestone Harbour, Kent CT20 1QH;

"general direction" means a direction given or proposed to be given under article 27;

"the harbour" means Folkestone Harbour as comprised within the harbour limits;

"the harbour arm" means the pier projecting into the sea in a south-easterly and easterly direction from the south-eastern end of South Quay and on which stands a lighthouse at its tip;

"the harbour limits" means the limits of the harbour specified in article 20;

"the harbour limits map" means the deposited map numbered sheet HR05 and titled "Harbour Limits Map";

"the harbour master" means a person appointed as such by the Company and includes his deputies and assistants and any other person for the time being authorised by the Company to act, either generally or for a specific purpose, in the capacity of harbour master;

"harbour premises" has the meaning given by article 20(5);

"high water" means mean high water spring tides;

"the level of high water" means the level of mean high water spring tides;

(**6**) S.I. 1991/237.
(**7**) 47 Geo.III c.ii.
(**8**) 58 Geo. III c.xxi.
(**9**) 7 & 8 Vict. c.lxix.
(**10**) 1847 c.27.
(**11**) 1885 c.cxxxvii.
(**12**) 1992 c.6.

"the limits of deviation" means the limits of deviation for the works shown on the deposited plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and "maintenance" shall be construed accordingly;

"master", in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

"owner" in relation to any vessel, includes any part-owner, any charterer (including but not limited to a charterer by demise) or any mortgagee in possession of the vessel;

"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 body weight for the purpose; or

(c) by a combination of the methods referred to in paragraphs (a) and (b);

"the revetment working area" means the area labelled "Revetment working area and temporary rock storage" on sheet HR02 of the deposited plans;

"special direction" means a direction under article 30;

"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 at the harbour as authorised from time to time;

"vessel" means a ship, boat, raft or water craft of any description and includes non-displacement craft, personal watercraft, seaplane and any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) and a hovercraft, hydrofoil vessel or any other amphibious vehicle, used or capable of being used as a means of transportation on water; and

"the works" means the works authorised by this Order or, as the case may require, any of, or any part of, those works.

(2) All situations, distances, points, coordinates, directions, areas, lengths, dimensions or other measurements stated in this Order (other than the limits of deviation) shall be construed as if the words "or thereabouts" were inserted after each such situation, distance, point, coordinate, direction, area, length, dimension or other measurement and distances between points on a work shall be taken to be measured along that work.

(3) Coordinates specified in this Order are in degrees, minutes and decimals of minutes and shall be construed as references to WGS84 coordinates.

(4) In paragraph (3) "WGS84" means the World Geodetic System, revised in 1984 and further revised in 2004.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, the proviso to section 32, 48 to 50, 67, 77, 81, 82, 86 to 90, 97 to 103 and so much of the proviso to section 83 as follows the words "the special Act"), so far as applicable to the purposes, and not inconsistent with, the provisions of this Order, is incorporated with, and forms part of this Order subject to the modifications stated in paragraphs (2) to (6).

(2) Section 33 shall not apply to the harbour arm, the work authorised by article 4, or South Quay except so much of its northern face as faces those parts of the harbour to the west of East Pier and the north of South Quay known as the Inner Harbour and the Outer Harbour.

(3) Section 63 shall have effect subject to the modification that for the words from "liable to" to the end of the section there are substituted the words "be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale".

(4) Section 69 shall have effect subject to the modification that for the words from "shall forfeit" to the end of the section there are substituted the words "shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale".

(5) Section 85 shall have the 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".

(6) In construing the provisions of the Act of 1847 as incorporated with this Order—

(a) the expression "the special Act" means this Order, the expression "the undertakers" means the Company and the expression "the harbour, dock, or pier" shall mean the harbour;

(b) the expression "limits" and "the prescribed limits" mean the harbour limits;

(c) for the definition of the word "vessel" in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2 (1) of this Order; and

(d) the reference in section 53 of the Act of 1847 to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing.

(7) The words "and the Harbours, Docks and Piers Clauses Act 1847" in section 2, and section 57, of the Act of 1885 and article 8(3) of the 1991 Order are revoked.

PART 2

WORKS

Power to construct works

4.—(1) Subject to the provisions of this Order, the Company or others acting on its behalf may, in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown on those plans and according to the levels shown on the deposited sections, construct and maintain the works described as follows with all necessary works and conveniences connected with or incidental to them—

A concrete wave wall and retaining wall fronting South Quay to the north of the harbour arm commencing at 51°04.6780'N 01°11.3748'E and extending in a north north-easterly direction to 51°04.7395'N 01°11.3970'E and then along a curved path in a northerly direction around to a west south-westerly direction to 51°04.7430'N 01°11.3887'E, together with a rock revetment disposed about a crest line commencing at 51°04.6742'N 01°11.3779'E and extending in a north north-easterly direction to 51°04.7297'N 01°11.3980'E and then along a curved path in a northerly direction around to a west north-westerly direction to 51°04.7331'N 01°11.3949'E. The overall rock revetment extends 19 metres seaward of the crest to its toe and along most of its length extends five metres landward of its crest to the wave wall.

(2) The Company may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and may by means of the works, enclose and reclaim so much of the bed of the sea and the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Company may, within the limits of deviation, from time to time reconstruct, extend, enlarge, renew, alter, add to, replace or re-lay the works authorised

by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, renewed, altered, added to, replaced or re-laid.

(4) The Company may construct or permit the construction of buildings on the western quay of the Inner Harbour extending above part of the Inner Harbour and on South Quay eastwards of reference point 51°04.7272'N 01°11.2844'E extending above part of the Outer Harbour.

Power to make subsidiary and accommodation works

5.—(1) Subject to the provisions of this Order, the Company may from time to time construct, lay down, place, remove, replace, work or use and maintain whether temporarily or permanently—

(a) within the limits of deviation all such works, conveniences, appliances and apparatus and take such measures as it from time to time deems necessary or expedient for the purposes of or in connection with or incidental to the construction, maintenance and use of the works authorised by article 4; and

(b) within the harbour such works for the accommodation or convenience of vessels as it thinks fit, including, without prejudice to the generality of the foregoing, pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buoys, bollards, navigation marks and lights.

(2) In the course of erecting, constructing, laying down, placing, removing and replacing the works the Company may carry out construction activity, including the temporary placing or storage of plant, equipment and rock, within the limits of deviation and the revetment working area.

Period for commencement of works

6.—(1) Subject to paragraph (2), if the works in article 4 are not substantially 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 granted by this Order to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to works carried out under paragraph (3) of article 4 or article 5.

Works to be within district of Shepway, etc.

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

(a) the district of Shepway;

(b) the local justice area of East Kent; and

(c) the Folkestone Harbour 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(**13**) until the Company has certified in writing to the Director General of Ordnance Survey that the works have been completed.

(4) In paragraph (2) "mean low water" means the level of mean low water neap tides.

(**13**) 1841 c. 30.