



# Colchester Borough Council Act 2001

## 2001 CHAPTER ii

An Act to make provision for the closure of certain commercial harbour facilities and to enable the Colchester Borough Council to cease to be a harbour authority for the harbour of Colchester; and for connected purposes. [22nd March 2001]

Whereas—

- (1) By the [Colchester Corporation Act 1892 \(c. cvii\)](#) the undertaking of the Commissioners for the Improvement of the River Colne was transferred to the mayor, aldermen and burgesses of the borough of Colchester (“the Corporation”);
- (2) The Colchester Borough Council (“the Council”) as successors to the Corporation are the harbour authority of the harbour of Colchester (“the harbour”);
- (3) Following the closure of the port facilities at Wivenhoe in 1991, when the existing commercial operator of these facilities withdrew, the remaining port facilities of the harbour are located at the Hythe and Rowhedge:
- (4) These facilities are located between 8 and 10 miles upriver from the mouth of the estuary of the River Colne and access is possible only at certain states of the tide, making the harbour unattractive to commercial users who are increasingly employing larger vessels than can be suitably accommodated at the harbour, and who favour ports where greater access is possible:
- (5) Trade at the harbour declined rapidly between 1988 and 1991 and, despite the efforts of the Council to effect economies in its harbour operations, those operations have been making substantial deficits:
- (6) In November 1993 the Council approved recommendations from its Harbour Working Party in liaison with harbour users to effect economies in the operation of the harbour, but the implementation of those recommendations has not enabled the deficits to be eliminated and, despite further action taken by the Council in 1994 and 1995, the harbour operations have since recorded the following deficits:—
  - 1994/5 – £176,500
  - 1995/6 – £123,200
  - 1996/7 – £147,600

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1997/8 – £213,600

1998/9 – £258,600:

- (7) The Council is advised that there is no reasonable prospect of maintaining and managing the harbour otherwise than at a continuing loss which would have to continue to be subsidised from the general revenues of the Council:
- (8) It is undesirable that the losses sustained by the Council in respect of the harbour undertaking should continue and it is therefore necessary for action to be taken by the Council as soon as possible with a view to preventing any further losses:
- (9) The long-term decline of the trade of the harbour and its businesses has had a deleterious effect upon the character and appearance of East Colchester, which the Council is seeking to address both by providing for the orderly closure of the residual commercial facilities of the harbour and by implementing initiatives for the regeneration of vacant and derelict land, in conjunction with the Colchester Economic Forum, the Essex County Council, the private sector and the local communities of East Colchester:
- (10) These initiatives include the establishment of the East Colchester Partnership which receives funding under the Government's Single Regeneration Budget from the East of England Development Agency in recognition of the area's acute social needs and the necessity of reviving economic activity:
- (11) It is expedient that the residual commercial facilities between the Upper Hythe and Fingringhoe should be closed and that the Council should cease to be a harbour authority for the harbour:
- (12) It is expedient that, following closure, certain provision should be made in respect of pilotage and navigational aids on parts of the River:
- (13) It is expedient that the other provisions of this Act should be enacted:
- (14) The purposes of this Act cannot be effected without the authority of Parliament:
- (15) A plan showing the lands in respect of which certain user rights may be affected by the closure of the residual commercial facilities under the powers of this Act and also a book of reference to such plan containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of those lands were duly deposited in the Office of the Clerk of the Parliaments and the Private Bill Office, House of Commons, and with the proper officer of the Essex County Council:
- (16) In relation to the promotion of the Bill for this Act the requirements of section 239 of the Local Government Act 1972 (c. 70) have been observed:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

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## 1 Short title

This Act may be cited as the Colchester Borough Council Act 2001.

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## 2 Interpretation

In this Act, unless the context otherwise requires—

“the 1961 Act” means the Land Compensation Act 1961 (c. 33);

“the 1972 Act” means the Local Government Act 1972 (c. 70);

“the appointed day” means the day appointed by the Council in accordance with section 4 (Appointed day) of this Act as the appointed day for the purposes of this Act;

“the borough” means the borough of Colchester;

“the Commissioners” means the Brightlingsea Harbour Commissioners, who are the statutory harbour authority for the harbour of Brightlingsea;

“the Council” means the Colchester Borough Council;

“the harbour of Colchester, the limits of which extend from the North Bridge, Colchester (51°53.6'N, 00°54.0'E) down the River (including its creeks and branches, other than Brightlingsea Creek) to an imaginary line drawn south-westward through two beacons at Colne Point (51°46.1'N, 01°02.7'E), thence to the Inner Bench Head Buoy (51°45.9'N, 01°01.9'E), thence to the Fishery Buoy (51°45.9'N, 01°01.6'E) and thence northward to Mersea Stone (51°48.0'N, 01°00.5'E)”>the harbour” means the harbour of Colchester, the limits of which extend from the North Bridge, Colchester (51°53.6'N, 00°54.0'E) down the River (including its creeks and branches, other than Brightlingsea Creek) to an imaginary line drawn south-westward through two beacons at Colne Point (51°46.1'N, 01°02.7'E), thence to the Inner Bench Head Buoy (51°45.9'N, 01°01.9'E), thence to the Fishery Buoy (51°45.9'N, 01°01.6'E) and thence northward to Mersea Stone (51°48.0'N, 01°00.5'E);

“harbour authority” has the same meaning as in the Harbours Act 1964 (c. 40);

“the River” means the River Colne;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990 (c. 8); and
- (b) any operator of a telecommunications code system.

## 3 Closure of harbour facilities and termination of status as harbour authority

(1) Subject to the provisions of this section, on and from the appointed day no person shall use, or permit to be used, land abutting the River between the Haven Bridge, Colchester and an imaginary line drawn across the River at Ballast Quay, Fingringhoe—

- (a) for the loading or unloading of cargoes for commercial purposes; or
- (b) the embarking or disembarking of passengers,

on or from any vessel in the River.

(2) On and from the appointed day the Council shall cease to be under any obligation which is inconsistent with subsection (1) above and to which the Council was subject in whatever capacity.

(3) On and from the appointed day the Council shall cease to be a harbour authority for the harbour.

(4) After the appointed day the Council—

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- (a) may dismantle, demolish and remove any property owned by the Council as former harbour authority;
  - (b) may sell or otherwise realise any such property; and
  - (c) may appropriate any such property or the proceeds of sale or realisation thereof for the purposes of any of its functions.
- (5) After the appointed day the Council may dispose of or appropriate, for any of the purposes for which it is authorised by any enactment to acquire land by agreement, all or any part of the land owned by it as former harbour authority.
- (6) Nothing in the preceding provisions of this section shall—
  - (a) affect the status of the Council as owner of the bed of the River;
  - (b) affect the exercise of any functions of a water undertaker within the meaning of the Water Industry Act 1991 (c. 56);
  - (c) prevent the landing of fish from any fishing vessel;
  - (d) affect the operation of the seasonal ferry between Wivenhoe, Rowhedge and Fingringhoe;
  - (e) prevent the use of Ballast Quay, Fingringhoe for the shipment by river of minerals extracted from workings adjacent to that quay;
  - (f) prevent the use of land for the embarking or disembarking of any person on or from any pleasure craft or sailing barge or any vessel in the service of the Council, a government department or statutory undertaker; or
  - (g) affect the operation of the harbour undertaking of the Commissioners.
- (7) If any of the rights of the Council as owner of the bed of the River have been extinguished by any enactment repealed by this Act, those rights shall revive on the appointed day.

#### **4 Appointed day**

- (1) The date appointed by the Council by resolution as the appointed day shall be a date not less than two months after the date of the resolution of the Council.
- (2) As soon as may be after the passing of that resolution the Council shall publish a notice thereof once in each of two successive weeks in Lloyd's List newspaper and at least one local newspaper circulating in the borough.
- (3) Either—
  - (a) a copy of Lloyd's List newspaper and of a local newspaper containing the notice referred to in subsection (2) above; or
  - (b) a photostatic or other reproduction certified by the Director of Administration of the Council to be a true reproduction of a page or part of a page of Lloyd's List newspaper and of a local newspaper bearing the date of its publication and containing the notice referred to in subsection (2) above,
 shall be evidence of the publication of the notice and of the date of publication.

#### **5 Pilotage and navigational aids**

- (1) On and from the appointed day—
  - (a) the jurisdiction of the Commissioners for the purposes of the Pilotage Act 1987 (c. 21) shall include so much of the River as lies between an imaginary line drawn across the River immediately upstream of the site of No. 42 Buoy,

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Wivenhoe (51°51.2'N, 00°57.5'E) and the imaginary line mentioned in the definition of “the harbour” in section 2 (Interpretation) of this Act; and

- (b) nothing in subsection (5) of section 7 of that Act shall prevent a pilotage direction under that section from applying to that area of the River.

(2) On and from the appointed day—

- (a) the Commissioners shall for the purposes of Part VIII of the Merchant Shipping Act 1995 (c. 21) be the local lighthouse authority for so much of the River as lies between the imaginary lines referred to in subsection (1) above; and
- (b) section 210 of that Act (light dues leviable by local lighthouse authorities) shall have effect so as to enable the Commissioners to levy charges in respect of any lighthouse, buoy or beacon situated in so much of that part of the River as is outside the harbour of Brightlingsea.

## **6 Saving for certain byelaws**

(1) On and from the appointed day the byelaws relating to pleasure boats made by the Council on 7 June 1972 and confirmed on 26 March 1973 (as amended by the byelaws made on 10 June 1985 and confirmed on 19 July 1985) shall have effect as if—

- (a) they were made by the Council under section 76 of the Public Health Act 1961 (c. 64) and section 235 of the 1972 Act; and
- (b) the administrative area of the Council encompassed the whole of the areas to which the byelaws apply.

(2) The byelaws mentioned in subsection (1) above shall cease to have effect upon the confirmation by the Secretary of State of byelaws which—

- (a) provide for the regulation of pleasure craft on the River; and
- (b) are made by the Council and the Tendring District Council under section 235 of the 1972 Act or any other relevant enactment;

and any such byelaws may be made so as to apply to any area to which the byelaws mentioned in that subsection applied immediately before they ceased to have effect.

## **7 Compensation for harbour businesses**

(1) Subject to the provisions of this section any person who—

- (a) on the appointed day is in possession of an interest in land and has a right to use that land which is incapable of being exercised as a consequence of the operation of subsection (1) of section 3 (Closure of harbour facilities and termination of status as harbour authority) of this Act; and
- (b) on 26 November 1999 was carrying on upon that land a business involving his use of the harbour for the shipping or unshipping of cargoes or the embarking or disembarking of passengers,

shall be entitled to be paid compensation by the Council in respect of any loss suffered by him in consequence of the operation of that subsection.

(2) Any compensation payable under subsection (1) above shall be assessed in accordance with the provisions of the 1961 Act.

(3) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal and the provisions of sections 2 and 4 of the 1961 Act shall, subject to any necessary modifications, apply to any such determination.