
STATUTORY INSTRUMENTS

1991 No. 540

HARBOURS, DOCKS, PIERS AND FERRIES

**The Sealink (Transfer of Lymington
Pier) Harbour Revision Order 1991**

Made - - - - *4th March 1991*

Coming into force - - *5th March 1991*

Whereas the making of this Order is not opposed:

Now therefore the Secretary of State for Transport (being the appropriate Minister under section 14(7) of the Harbours Act 1964⁽¹⁾ for the purpose of making this Order), in exercise of the powers conferred by the said Section 14 and now vested in him⁽²⁾ and of all other powers enabling him in that behalf, and on the application of Wightlink Limited hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Sealink (Transfer of Lymington Pier) Harbour Revision Order 1991 and shall come into force on 5th March 1991.

Interpretation

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

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847⁽³⁾;

“the Commissioners” means the Lymington Harbour Commissioners;

“the Company” means Wightlink Limited;

“the day of transfer” means the day after the day on which expires a period of four weeks beginning with the day on which this Order comes into force;

“the defined limits” means the area of water adjacent to the transferred harbour which is shown coloured pink on the signed plan;

“enactment” means any Act or any order or scheme made under an Act;

“the harbour master” means the harbour master of the Commissioners;

(1) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14.

(2) See section 57(1) of the Harbours Act 1964 and S.I.1981/238.

(3) 1847 c. 27.

“the harbour of Lymington Pier” means the pier at Lymington harbour as regards which there are vested in Sealink immediately before the day of transfer statutory powers or duties of improvement, maintenance or management;

“the linkspan” means the linkspan and ancillary works which immediately before the commencement of this Order form part of the pier at Lymington harbour which is being managed by Sealink, or by the Company as agent for Sealink pursuant to an Agreement made under section 14(1)(a) of the Transport Act 1962⁽⁴⁾;

“Lymington harbour” means “the harbour” defined in section 3 of the Lymington River and Harbour Order 1951⁽⁵⁾;

“the Piermaster” means the Company’s piermaster at the transferred harbour;

“Sealink” means Sealink Harbours Limited;

“the signed plan” means the plan marked “Signed plan referred to in article 2 (Interpretation) of the Sealink (Transfer of Lymington Pier) Harbour Revision Order 1991” and signed in triplicate by an Assistant Secretary in the Department of Transport, two copies of which have been deposited at that Department and one copy of which has been deposited at the offices of the Company at the harbour of Lymington Pier;

“the transferred harbour” means the harbour of Lymington Pier;

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

(2) In this Order a reference to the undertaking of Sealink at the transferred harbour is a reference to the powers, duties, property, rights and liabilities of Sealink in relation to that harbour which are transferred by this Order.

Power to continue and maintain the linkspan

3. Sealink may continue and maintain the linkspan.

Designation of Company as harbour authority

4. On the day of transfer the Company shall become the harbour authority for the transferred harbour and Sealink shall cease to be the harbour authority for that harbour.

Transfer of functions, property etc.

5.—(1) On the day of transfer all property vested in Sealink comprising, or held by it for the purposes of, the transferred harbour and all rights and liabilities incurred by it for the purposes of the transferred harbour shall be transferred to and vested in the Company.

(2) On the day of transfer the powers and duties conferred or imposed on Sealink by any statutory provision of local application applied in relation to it by the Scheme dated 27th October 1981 made by Sealink U.K. Limited pursuant to section 2 of the Transport Act 1981 and approved by the Secretary of State with modifications on 5th July 1982 read with Schedule 4 to the Transport Act 1968⁽⁶⁾ as applied by the said section 2 (subject to any subsequent repeal or amendment of any such statutory provision), or by any enactment subsequent to that Scheme, including this Order, for the purpose of, or in connection with, the improvement, maintenance or management of the transferred harbour shall be transferred to the Company and accordingly as from that day any such statutory provision of local application shall, so far as it relates to the transferred harbour and with any necessary modifications, apply in relation to the Company as if for references to Sealink there were substituted (unless the context otherwise requires) references to the Company.

(4) 1962 c. 46.

(5) Confirmed by 1951 c.xxv.

(6) 1968 c. 73.

Saving of byelaws etc.

6. As from the day of transfer any byelaw, regulation, licence or consent made, issued or granted by Sealink in relation to the transferred harbour and in force immediately before that day shall notwithstanding the making of this Order continue in force and shall be deemed to have been made, issued or granted by the Company.

Savings of agreements etc.

7. All sales, conveyances, leases, grants, assurances, deeds, contracts, bonds, agreements, notices and demands affecting the undertaking of Sealink at the transferred harbour and in force immediately before the day of transfer (other than any lease or deed the parties to which include both Sealink and the Company) shall (in so far as they relate to that undertaking) on and from that day be as binding and of as full force and effect in every respect and may be enforced as fully and effectively against or in favour of the Company as if (except in any case where the Company as agent for Sealink is already a party thereto, or bound thereby or entitled to the benefit thereof) the Company instead of Sealink had been a party thereto or bound thereby or entitled to the benefit thereof.

Continuance of proceedings

8. Nothing in this Order shall release, discharge or suspend any action, arbitration or other proceeding, or any cause of action, arbitration or other proceeding, pending or existing immediately before the day of transfer by or in favour of or against Sealink or by or in favour of or against the Company as agent for Sealink, in relation to Sealink's undertaking at the transferred harbour and any such action, arbitration or proceeding or cause of action, arbitration or proceeding (other than an action, arbitration or proceeding which is or may be an issue between Sealink and the Company or Sea Containers Ltd.) may be maintained, prosecuted or continued by or in favour of or against the Company and may be amended in such manner as may be necessary for that purpose.

Charges

9.—(1) On and after the day of transfer the Company shall in the exercise of statutory powers and duties at the transferred harbour, have power to make such reasonable charges for its services and facilities as it thinks fit.

(2) This article does not apply in relation to—

- (a) ship, passenger and goods dues; or
- (b) charges ascribable to the running of a ferry service in or from a harbour;

and does not authorise the making of any charge in a case where an enactment relating to the transferred harbour expressly provides for freedom from charges or otherwise prohibits the making of any charge.

Disposal of property no longer required for the transferred harbour

10. On and after the day of transfer the Company, in respect of property vested in it and held for the purposes of the transferred harbour which is no longer required for those purposes, may dispose of such property in such manner, whether by way of sale, exchange, lease, the creation of any easement, right or privilege or otherwise, for such period, upon such conditions and for such consideration as it thinks fit.

Limits of jurisdiction

11.—(1) On and after the day of transfer the area within which the Company shall exercise jurisdiction as a harbour authority and within which the powers of the Piermaster shall be exercised shall comprise the defined limits in addition to the transferred harbour.

(2) Paragraph (1) of this article shall not prejudice or affect any of the rights, powers or privileges of the Commissioners and in case of conflict between any direction lawfully given by the harbour master and any direction given by the Piermaster, the direction of the harbour master shall prevail.

Incorporation of provisions of Act of 1847

12. The provisions of sections 51, 52, 53 and 58 of the Act of 1847 are hereby incorporated with this Order and shall have effect on and after the day of transfer;

Provided that—

- (a) the expression “the harbour, dock or pier” where used in the said incorporated provisions means the transferred harbour and the defined limits;
- (b) the expression “the harbour master” where so used means the Piermaster;
- (c) section 52 of the Act of 1847 as incorporated with this Order, shall extend to empower the Piermaster to give directions prohibiting the mooring of vessels in any particular place or places within the defined limits; and
- (d) the said section 52 shall not be construed as requiring the Piermaster in emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section but in pursuance of that section for all or any of the purposes thereof the Piermaster shall be entitled in emergency to give general directions applicable to all vessels or to any particular class or classes of vessels.

Saving for Trinity House

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

Signed by authority of the Secretary of State for Transport

4th March 1991

H. B. Wenban-Smith
An Under Secretary in the
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers the harbour undertaking at Lymington Pier from Sealink Harbours Limited to Wightlink Limited and provides that, on and after the day of transfer, the latter shall exercise jurisdiction as harbour authority and its piermaster may exercise his powers, within a small water area adjacent to the pier but subject to the overriding jurisdiction of the Lymington Harbour Commissioners and their harbour master. The Order incorporates certain provisions of the Harbours, Docks and Piers Clauses Act 1847.

The applicant for the Order is Wightlink Limited.