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STATUTORY INSTRUMENTS

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**2007 No. 3463**

**The Maryport Harbour Revision Order 2007**

**PART 5**

*Control of Works and Dredging in the Harbour*

**Restriction of works and dredging**

**34.**—(1) Subject to paragraph (4), no person other than the Authority shall—

- (a) construct, alter, renew or extend any work; or
- (b) dredge,

on, under or over tidal waters or land below the level of high water in the harbour unless he is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence.

(2) No person other than the Authority shall do any of the things mentioned in paragraphs (1) (a) and (b) except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 36 or, as the case may require, article 37.

(3) The Authority may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site of it to its former condition; and if he fails to comply with the notice, the Authority may carry out the works so required and may recover from him the cost of so doing.

(4) Nothing in this article shall apply to—

- (a) any operations or works specifically authorised by any enactment; or
- (b) any operations or works of a statutory undertaker.

(5) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Control of certain operations and works of statutory undertakers**

**35.**—(1) This article applies to any operations or works of a statutory undertaker in the harbour on, under or over tidal waters or land below the level of high water, not being operations or works which are specifically authorised by an enactment.

(2) Subject to paragraph (3), a statutory undertaker shall not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Authority and has supplied the Authority with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker shall inform the Authority of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies shall be carried out subject to any directions which may from time to time be given by the Authority to the statutory undertaker, being

directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who, without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Licensing of works**

**36.**—(1) The Authority may upon such terms and conditions as they think fit grant to any person a licence to construct, alter, renew or extend any works in the harbour on, under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with the public right of navigation or any other public right by such works as constructed, altered, renewed, or extended.

(2) Application for a works licence shall be made in writing to the Authority and shall—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action to be taken to enable him to obtain such rights if the licence is granted.

(3) In granting a licence, the Authority may require modifications in the plans, sections and particulars submitted under paragraph (2).

(4) The Authority may require an applicant for a works licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(5) The Authority may require a licensee, being the original grantee or his successor, where works are constructed pursuant to the licence and as a condition of the grant of the licence to pay such reasonable fees in respect of the Authority's administrative expenses and overheads in supervising or inspecting, where necessary, the construction or maintenance of the works.

(6) Where the Authority refuse an application for a works licence, they shall give reasons in writing for their refusal.

(7) Where the Authority grant a works licence upon terms or conditions or require any modification in the plans and particulars, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

(8) If within three months from the receipt of the application under paragraph (2) the Authority do not grant a works licence they shall be deemed to have refused the application.

(9) Articles 39 and 40 shall apply in relation to the holder of a works licence as respects the works which are authorised by the licence as they do in relation to the Authority.

(10) In the carrying out of operations in pursuance of a works licence, the holder of the licence shall not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus,

without the consent of the statutory undertaker concerned.

### **Licensing of dredging**

**37.**—(1) The Authority may, upon such terms and conditions as they think fit, grant to any person a licence to dredge in any part of the harbour.

(2) Application for a dredging licence shall be made in writing to the Authority and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the

operations to be carried out in the exercise of the powers granted by the licence and, in granting any such licence the Authority may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (4) to (8) and (10) of article 36 shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Subject to articles 78 and 80, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995)<sup>(1)</sup> taken up or collected by means of dredging in pursuance of a dredging licence shall be the property of the holder of the licence and he may use, sell or otherwise dispose of or remove or deposit the materials as he thinks fit.

(5) No materials taken up or collected by means of dredging in pursuance of a dredging licence shall be laid down or deposited—

- (a) in contravention of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

#### **Appeals in respect of works or dredging licence**

**38.**—(1) An applicant for a works licence or a dredging licence who is aggrieved by—

- (a) a refusal of the application by the Authority;
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Authority in the plans, sections or particulars submitted by the applicant,

may, within 28 days from the date on which the Authority notify the applicant of their decision or the date on which the Authority are, under article 36(8), deemed to have refused the application, appeal against the decision to a magistrates' court acting for the area in which the licence or proposed licence has or would have effect.

(2) An appeal under paragraph (1) shall be made by notice in writing stating the grounds of the appeal.

(3) The appellant shall send to the Authority a copy of the notice of his appeal.

(4) On an appeal under paragraph (1), the court may make such order as it thinks fit, such order to be limited to the subject matter of the appeal.

#### **Tidal works not to be executed without approval of the Secretary of State**

**39.**—(1) A tidal work shall not be constructed, altered, replaced, relaid or reconstructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, replaced, relaid or reconstructed in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the Authority at their own expense to remove the tidal work or any part of it and restore its site to its former condition; and if on the expiration of a period of 30 days beginning with the date on which the notice is served upon the Authority they shall have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice, or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work or part of it and restore the site to its former condition,

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(1) 1995 c. 21.

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Authority.

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

**40.**—(1) The Authority shall at or near a tidal work during the whole time of its construction, alteration, replacement, relaying or re-construction, 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 may from time to time direct.

(2) If the Authority fail to comply in any respect with a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**41.**—(1) In case of injury to or destruction or decay of a tidal work or any part of a tidal work, the Authority shall as soon as is 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 the Authority fail to notify Trinity House as required by this article, or to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**42.**—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Authority at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site 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 vested in the Authority 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 of it, in any notice given under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Authority, they have 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 him in so doing shall be recoverable from the Authority.

#### **Survey of tidal works**

**43.** The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work and any expenditure incurred by the Secretary of State in such a survey and examination shall be a debt due from the Authority to the Crown and shall be recoverable from the Authority.

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

**44.**—(1) The Authority shall at the outer extremity of every tidal work 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 may from time to time direct.

(2) If the Authority fail without reasonable excuse to comply in any respect with a direction given under this article they shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.