
STATUTORY INSTRUMENTS

1989 No. 1545

The Harwich Dock Company
Harbour Empowerment Order 1988

PART IV

MISCELLANEOUS AND GENERAL

Power to mortgage dock undertaking

21. The Company may mortgage, charge or otherwise encumber the dock undertaking or any part thereof.

Subsidiaries

22. The Company may enter into arrangements with any of their subsidiaries for the transfer to that subsidiary from the Company or any of their other subsidiaries in such manner and on such terms (including payments by any of the parties to the arrangements to any other of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Company, or, as the case may be, that other subsidiary, relating to the dock undertaking—

Provided that, in the case of a transfer of the whole or any part of the dock undertaking, the transferees shall be subject to all the restrictions, liabilities and obligations in respect of the dock undertaking or that part (as the case may be) to which the Company or other transferors are subject and shall perform all the duties of the Company or those transferors under this Order in respect of the dock undertaking or that part.

Power to make charges

23.—(1) Subject to paragraph (2) below, the Company may make such reasonable charges as they think fit for services and facilities provided by them or their subsidiaries.

(2) Paragraph (1) above does not authorise the levying of ship, passenger or goods dues within the meaning of the Harbours Act 1964.

(3) Nothing in this article shall affect any power of the Company to demand, take or recover charges which they may have under or by virtue of any enactment or rule of law.

As to use of dock undertaking

24. The Company may appropriate and set apart any part of the dock undertaking for the exclusive use of any particular vessel or class of vessel.

Power to remove goods

25. If any goods are left on or in any part of the dock undertaking the Company may require the owner of the goods to remove them, and if the goods are not so removed within six hours after

such requirement the Company may cause them to be removed to the Company's or any other public warehouse or store, and such removal shall be carried out at the expense and risk of the owner—

Provided always that—

- (a) notwithstanding such removal on behalf of the Company, the goods shall be liable to a general lien for the cost of removal, and for any charges payable to the Company by the owner; and
- (b) the power of the Company for preventing the removal of the goods until the cost of removal and the charges have been paid shall extend and apply to any goods removed or placed in store under this article.

Crown rights

26.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

Saving for Trinity House

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

For further protection of harbour authorities, etc.

28.—(1) In this article—

“the protected area” means in relation to the Board, and Sealink Harbours Limited, Harwich Harbour and in relation to Trinity House, the area bounded by the following co-ordinates—

Latitude 51° 56'.780N., Longitude 01° 17'.125E.

Latitude 51° 56'.865N., Longitude 01° 17'.110E.

Latitude 51° 56'.873N., Longitude 01° 17'.185E.

Latitude 51° 56'.815N., Longitude 01° 17'.195E.;

“the protected interests” means the Board, Sealink Harbours Limited or Trinity House, or any of them;

“the specified works” means any of the authorised works which are tidal works, and includes any operations carried out under the powers of article 13 of this Order in execution of the powers of article 5 of this Order.

(2) If, during the construction of the specified works on the foreshore or bed of the river, or of any temporary structures in connection therewith, or within five years after the completion of the specified works or the removal of such temporary structures, there shall be caused or created any accumulation of silt or other material, or any scouring or alteration of the tidal flow in the river, within the protected area in consequence of—

- (a) the construction of the specified works or such temporary structures; or
- (b) dredging carried out in connection with the construction of, or to afford access for vessels to, the specified works;

which shall cause either damage to the harbour works of the protected interests or an impediment to the free navigation of the protected area or shall prejudice safe navigation or berthing in that area, the Company, if so requested by the protected interests within the period of five years after such completion, shall remove such accumulation of silt or other material or, as the case may be, repair such damage or otherwise carry out such works or take such action as they may consider necessary for the removal of the impediment or the restoration of safe navigation and berthing, and, if they fail to do so, the protected interests may themselves cause the work to be done and may recover from the Company the reasonable cost incurred by them in doing so.

(3) If any such accumulation, scouring or alteration of the tidal flow arises within the said period of five years and is removed or remedied in accordance with paragraph (2) above, then any recurrence of such accumulation, scouring or alteration of the tidal flow shall from time to time be removed or otherwise remedied as aforesaid during a period of 10 years after the completion of the specified works or the removal of such temporary structures, as the case may be.

(4) The Company shall repay or, as the case may be, keep the protected interests indemnified against all damages, losses, costs and expenses which they may directly or indirectly sustain, or be liable for, or reasonably and properly incur, by reason or in consequence of any injury or damage which may be caused or may result to any harbour works or property of the protected interests, or as a result of any interference in the operation thereof, by or in consequence of any such accumulation, scouring or alteration of the tidal flow—

Provided that the protected interests shall give to the Company notice of any claim or demand made against them which, in the opinion of the protected interests, is a claim or demand for which the Company may be liable under this paragraph, and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.

(5) Any difference arising between the Company and the protected interests under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the president of the Institution of Civil Engineers.

Saving for Harwich Harbour Board

29.—(1) None of the provisions of this Order shall prejudice or affect any of the rights, powers or privileges of the Board.

(2) If in connection with the works the Board relocate the Guard Buoy any expenditure reasonably incurred by the Board in so doing shall be recoverable from the Company.

(3) Without prejudice to article 28 of this Order, as having effect for the protection of the Board, if in consequence of the construction of the works, or any of them, the Board find it necessary to dredge a channel for access by sea to their boat harbour, either to form a new access or to maintain the existing access or such new access, they may recover from the Company the costs reasonably incurred by them in so doing.