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STATUTORY INSTRUMENTS

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**1989 No. 1941**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Cowes Harbour Revision Order 1989**

*Made - - - - 2nd October 1989*

*Coming into force - - 3rd October 1989*

The Secretary of State for Transport, in exercise of the powers conferred by section 14 of the Harbours Act 1964<sup>(1)</sup> and now vested in him<sup>(2)</sup> (being the appropriate Minister under section 14(7) of that Act for the purpose of making this Order) and of all other powers enabling him in that behalf, and on the application of the Commissioners for the Harbour of Cowes, hereby makes the following Order:—

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1.—(1) This Order may be cited as the Cowes Harbour Revision Order 1989 and shall come into force on 3rd October 1989.

(2) The Cowes Harbour Acts and Orders 1897 to 1988 and this Order may be cited together as the Cowes Harbour Acts and Orders 1897 to 1989.

**Interpretation**

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

“the 1897 Act” means the Cowes Harbour Act 1897<sup>(3)</sup>;

“the Commissioners” means the Commissioners for the Harbour of Cowes incorporated by the 1897 Act;

“dredging licence” means a licence granted under article 6 of this Order;

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(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 and 14.

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

(3) 1897 c.cclviii.

“gas undertakers” means any public gas supplier within the meaning of Part I of the Gas Act 1986(4);

“gas work” means any main, pipe, apparatus, building, structure or other work of any nature belonging to the gas undertakers or for the maintenance of which they are responsible;

“the harbour” means the Harbour of Cowes and Cowes Roads as defined in section 3 of the Cowes Harbour Order 1931(5);

“level of high water” means the level of mean high-water springs;

“operator”, “telecommunications code” and “telecommunications code system” means have the meanings as in Schedule 4 to the Telecommunications Act 1984(6);

“works licence” means a licence granted under article 5 of this Order.

## PART II

### BORROWING POWERS

#### Power to borrow

3.—(1) For section 46 of the 1897 Act (Power to borrow) there shall be substituted the following section—

#### “46 Power to borrow

(1) Subject to the following provisions of this Act, the Commissioners may from time to time borrow at interest upon the security of all or any of the revenues and property of the Commissioners and by any method they see fit such sums of money as they think necessary.

(2) The total amount borrowed under this Act and outstanding at any one time shall not exceed £1 million.

(3) In calculating for the purposes of this section the aggregate amount of money borrowed by the Commissioners and outstanding at any one time there shall be excluded any sums borrowed for use within 12 months of the date of borrowing for repayment of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(4) All moneys borrowed under this Act shall be applied by the Commissioners only for the purposes to which capital is properly applicable.

(5) For the purposes of subsection (4) above, but without prejudice to its generality, purposes to which capital money is properly applicable shall be deemed to include—

- (a) the payment of any interest falling due within the five years immediately following the date of borrowing of any sum borrowed under this Act; and
- (b) the repayment within 12 months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.”.

(2) In consequence of paragraph (1) above section 20 (Power to borrow) of the Cowes Harbour Order 1936(7) is hereby repealed.

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(4) 1986 c. 44.  
(5) See 1931 c.lxxxix.  
(6) 1984 c. 12.  
(7) See 1936 c.lxxx.

## PART III

### CONTROL OF WORKS AND DREDGING

#### Restriction of works and dredging

4.—(1) Subject to paragraph (4) below, no person other than the Commissioners shall—

- (a) construct, alter, renew or extend any works; or
- (b) dredge; on, under or over tidal waters or tidal land below the level of high water in the harbour unless he is licensed to do so, in the case of works by a works licence and in the case of dredging by a dredging licence, or 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 5 or, as the case may be, article 6 of this Order.

(2) The Commissioners 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 thereof to its former condition; and if that person fails to comply with the notice, the Commissioners may carry out the work so required and recover from him the cost of so doing.

(3) Nothing in this article shall apply to any activity specifically authorised under any enactment.

(4) Subject to paragraphs (5) to (7) below, this article shall not affect—

- (a) the running of a telecommunications code system or the exercise of any right conferred by or in accordance with the telecommunications code on the operator of any such system;
- (b) the carrying out of any operations by the National Rivers Authority, any water undertaker or any sewerage undertaker in the exercise of their functions under the Public Health Act 1936<sup>(8)</sup>, the Water Resources Act 1963<sup>(9)</sup>, the Water Act 1973<sup>(10)</sup>, the Land Drainage Act 1976<sup>(11)</sup> or the Water Act 1989<sup>(12)</sup>;
- (c) the construction, alteration, renewal or extension by the gas undertakers of any gas work from time to time authorised under or by virtue of any enactment or any consent, wayleave or other instrument given or made under any enactment;
- (d) the carrying out of any work or dredging which, although not authorised as mentioned in sub-paragraph (c) above, is necessary in case of emergency for the protection of or to ensure the efficient operation of any gas work.

(5) Where any undertakers mentioned in paragraph (6) below intend to carry out any operations or works in the harbour they shall give reasonable notice of their intention to the Commissioners (unless, in an emergency, it is impracticable to do so) and shall supply the Commissioners with such particulars of the operations or works as the Commissioners may reasonably require.

(6) The undertakers referred to in paragraph (5) above are—

- (a) The National Rivers Authority, any water undertaker and any sewerage undertaker; and
- (b) any gas undertakers.

(7) Any activity to which paragraph (4) above relates shall be carried out subject to any directions which may from time to time be given by the Commissioners to the person or body concerned, 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, and, in the case of works carried out in

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<sup>(8)</sup> 1936 c. 49.  
<sup>(9)</sup> 1963 c. 38.  
<sup>(10)</sup> 1973 c. 37.  
<sup>(11)</sup> 1976 c. 70.  
<sup>(12)</sup> 1989 c. 15.

an emergency, subject to the giving of information thereof to the Commissioners by the person or body concerned without delay.

(8) Any person who 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.

(9) In any proceedings for an offence under paragraph (8) above it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) If in any case the defence provided by paragraph (9) above involves the allegation that the commission of the offence was due to an act or default of another person, the person charged shall not, without the leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that person as was then in his possession.

### **Licensing of works**

5.—(1) The Commissioners may, upon such terms and conditions as they think fit, grant to any person, subject to article 9 of this Order, a licence to construct, alter, renew or extend works in the harbour under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, altered, renewed or extended.

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

- (a) be accompanied by such plans, sections and particulars of the works to which the application relates as the Commissioners may reasonably require; and
- (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 taken to enable him to obtain such rights if the licence is granted; and, in granting a licence, the Commissioners may require modifications in the plans, sections and particulars so submitted.

(3) The Commissioners 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; and different fees may be specified in relation to different cases or classes of case.

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

(5) Sections 66 to 71 of the 1897 Act (which contain various requirements with respect to works) shall apply in relation to works authorised by a works licence as they apply in relation to works authorised by that Act.

(6) In the carrying out of operations in pursuance of a licence under this article, the holder of the licence shall not—

- (a) interfere with, damage or otherwise injuriously affect—
  - (i) any submarine cable placed or maintained by the operator of a telecommunications code system or the Southern Electricity Board;
  - (ii) any water main, sewer or sewage outfall pipe placed or maintained by the National Rivers Authority, any water undertaker or any sewerage undertaker; or
  - (iii) any gas work; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such cable, main, work, sewer or outfall pipe; without the consent of the person or body concerned.

### **Licensing of dredging**

6.—(1) The Commissioners may, upon such terms and conditions as they think fit, grant to any person, subject to article 9 of this Order, a licence to deepen, dredge, scour, cleanse, alter or improve the bed, foreshore and channels of the harbour.

(2) Application for a dredging licence shall be made in writing to the Commissioners and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the operation to be carried out in pursuance of the licence, and in granting any such licence the Commissioners may require modifications in the plans, sections and particulars so submitted.

(3) Article 5(2) and (3) of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) If within three months from the receipt of an application under paragraph (2) above the Commissioners do not grant a dredging licence, they shall be deemed to have refused the application.

(5) No such materials shall be laid down or deposited in any place below the level of high water except in such a position as may be approved by the Secretary of State and subject to such conditions or restrictions as he may impose.

(6) Paragraph (6) of article 5 of this Order shall apply in relation to the carrying out of operations in pursuance of a dredging licence as it applies in relation to the carrying out of operations in pursuance of a works licence.

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

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

- (a) a refusal of the Commissioners to grant a licence; or
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Commissioners in the plans, sections and particulars submitted by the applicant; may within 28 days from the date on which the Commissioners notify the applicant of their decision, or the date on which the Commissioners are, under article 5(4) or 6(4) of this Order, deemed to have refused the application, appeal to the Secretary of State.

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

(3) A person who appeals under paragraph (1) above shall give to the Commissioners notice of his appeal, accompanied by a copy of his statement of appeal; and the Commissioners shall, within 28 days from the receipt of the notice, be entitled to furnish to the Secretary of State their observations on the appeal.

(4) On an appeal under paragraph (1) above, the Secretary of State may—

- (a) dismiss the appeal; or
- (b) require the Commissioners to grant the licence or, as the case may be, to give their approval upon such terms or conditions and with such modifications (if any) of plans, sections or particulars as the Secretary of State may specify.

(5) The Commissioners shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (4) above.

### **Further protection of gas undertakers**

8.—(1) For the protection of the gas undertakers the following provisions of this article shall, unless otherwise agreed in writing between the Commissioners and the gas undertakers, apply and have effect.

(2) Subject to paragraph (4) below, before granting a works licence or a dredging licence, the Commissioners shall in any case where the proposed works or dredging would be at, over, under or near to any gas work situated on or under tidal waters or tidal lands below the level of high water in the harbour or in such a position as to be likely to affect or endanger any such work, or in any case where reasonably so requested by the gas undertakers, submit to the gas undertakers concerned detailed particulars of the proposed works or dredging, as the case may be, and furnish them with such further particulars with respect thereto as the gas undertakers may reasonably require, and such licence shall only be granted subject to such conditions as may be reasonably necessary to safeguard the gas work including, without prejudice to the generality of the foregoing, conditions empowering the gas undertakers from time to time to inspect the works or dredging to which the licence relates and to take any steps necessary to prevent damage to the gas work or to ensure that the gas work can operate efficiently and to recover from the holder of the licence the reasonable cost of any works carried out by the gas undertakers for those purposes.

(3) Subject to paragraph (4) below, if in any case any difference arises between the Commissioners and the gas undertakers with respect to the particulars required to be furnished to the gas undertakers by the Commissioners or with respect to the conditions which the gas undertakers require to be attached to a works licence or a dredging licence, such difference shall be determined by a single arbitrator to be agreed between the Commissioners and the gas undertakers concerned or in default of agreement to be appointed on the application of either party after notice in writing to the other party by the President of the Institution of Civil Engineers.

(4) Paragraphs (2) and (3) above do not apply where the licence in question is to be granted in accordance with article 7(5) of this Order.

(5) If within three weeks of the receipt by the gas undertakers from the Commissioners of the particulars of any proposed works or dredging the gas undertakers do not require any further particulars to be furnished or in any case where further particulars are required, within two weeks of the receipt thereof by the gas undertakers, the gas undertakers do not intimate that they require conditions to be attached to the licence for such works or dredging, the gas undertakers shall be deemed to have acquiesced in the granting thereof.

(6) Upon the grant of any works licence or dredging licence the Commissioners shall supply to the gas undertakers a copy of the licence and any conditions subject to which it is granted.

### **Crown rights**

9.—(1) Nothing in this Order shall affect 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 in this Order 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 part 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 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.

### **Savings for Trinity House**

10. Nothing in this Order shall prejudice or derogate from any of the powers, rights, duties or privileges of the Corporation of Trinity House of Deptford Strond.

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Signed by the authority of the Secretary of State

Department of Transport  
2nd October 1989

*H B Wendan-Smith*  
An Under Secretary in the

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## **EXPLANATORY NOTE**

*This note is not part of the Order)*

This Order amends the borrowing powers of the Commissioners for the Harbour of Cowes contained in section 46 of the Cowes Harbour Act 1897 and, in particular, empowers the Commissioners to borrow sums not exceeding £1 million.

The Order also empowers the Commissioners to grant licences in respect of the carrying out of works and dredging within the harbour.

The applicants for the Order are the Commissioners for the Harbour of Cowes.