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STATUTORY INSTRUMENTS

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**1991 No. 1745**

**The Montrose Harbour Revision Order 1991**

**PART IV**

**CONTROL OF WORKS AND DREDGING IN THE HARBOUR**

**Restriction of works and dredging**

9.—(1) Subject to paragraph (3) below, no person other than the Authority shall—

- (a) alter or renew 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 so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor 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 11 or, as the case may require, article 12 of this Order.

(2) 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 thereof 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 the cost of so doing from that person.

(3) 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.

(4) 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**

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

(2) Subject to paragraph (3) below, 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) above, the statutory undertaker concerned shall inform the Authority of the operations or works as soon as reasonably practicable.

(4) Any operation 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

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.

(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**

**11.**—(1) The Authority may upon such terms and conditions as they think fit grant to any person a licence to alter or renew any works in the Harbour on, 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 altered or renewed.

(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 taken to enable him to obtain such rights if the licence is granted; and, in granting a licence, the Authority may require modifications in the plans, sections and particulars so submitted.

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

(4) Where the Authority refuse to grant a works licence which has been applied for they shall give reasons in writing for their refusal.

(5) 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.

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

(7) Articles 10 to 14 of the Order of 1974 (which contain certain requirements with respect to works) 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 as respects works constructed by the Authority.

(8) 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.

### **Licence to dredge**

**12.**—(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 (3), (4), (5) and (6) of article 11 of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894<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:

Provided that—

- (i) no such material shall be laid down or deposited in any place below the level of high water except in such positions as may be approved by the Authority and subject to such conditions as may be imposed by the Authority;
- (ii) if it appears to the holder of the dredging licence that the Authority has unreasonably withheld their approval under paragraph (i) of this proviso or that any condition imposed by the Authority under that paragraph is unreasonable, he may appeal to the Secretary of State whose decision shall be binding upon the parties.

(5) The grant of a dredging licence shall not confer statutory authority for the carrying out of the operations covered by the licence.

(6) Paragraph (8) of article 11 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 licence**

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

- (a) a refusal of the Authority to grant a licence, or
- (b) any terms or conditions subject to which the licence is granted, or
- (c) any modifications required by the Authority in the plans, sections and 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 11(6) or 12(3) 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 the appeal.

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

(4) On an appeal under this article the Secretary of State may—

- (a) dismiss the appeal; or
- (b) require the Authority 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 and particulars as the Secretary of State may specify.

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

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(1) 1894 c. 60.

### **Provision of vessels and towage services**

14. The Authority may construct, purchase, contract for or hire, and may maintain and use, vessels required by the Authority for carrying out their functions, including tugs for the use and accommodation of vessels, and may sell or dispose of any such vessels.

### **Power to acquire and dispose of business or shares**

15.—(1) The Authority may—

(a) acquire by agreement—

(i) any business or undertaking which consists wholly or mainly of the carrying out of harbour operations or so much of any business or undertaking as consists of the carrying out of such operations; or

(ii) any business or undertaking which is wholly or mainly engaged in or which it is proposed should become wholly or mainly engaged in providing services or facilities which the Authority themselves are authorised to provide;

(b) subscribe for or acquire any shares, stock, debentures, debenture stock or any other security of a like nature of a body corporate which is wholly or mainly engaged, or which it is proposed should become wholly or mainly engaged, in the provision, maintenance or operation of a harbour or in providing services or facilities which the Authority themselves are authorised to provide;

(c) form and promote, or join with any other person in forming and promoting, a company for carrying on any function of the Authority;

(d) dispose of or discontinue the whole or any part of their undertaking acquired under this article and held for the purposes of the Harbour but subject to all liabilities and obligations in respect thereof to which the Authority are subject; and

(e) dispose of any share or other securities subscribed for or acquired under this article.

(2) Nothing in this article shall authorise a company formed under sub-paragraph (c) of paragraph (1) above to exercise any of the powers of the Authority under—

(a) the Harbours, Docks and Piers Clauses Act 1847<sup>(2)</sup> ;

(b) the Harbours Act 1964<sup>(3)</sup> ; and

(c) article 22 (Byelaws respecting harbour) of the Order of 1974.

### **Liability for safety of goods**

16. The Authority shall not be responsible for the safety of goods deposited in any part of the harbour estate not specifically set apart by the Authority for the purpose of warehousing.

### **Application of certain provisions of Order of 1974**

17. The provisions of articles 9 to 14 of the Order of 1974 (which contain certain requirements with respect to works) shall (so far as applicable) apply, as well as to tidal works as defined in that Order, to so much of any work which the Authority have constructed under any other statutory provision of local application as is on, under or over tidal waters or tidal land below the level of high water.

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(2) 1847 c. 27.

(3) 1964 c. 40.

## Repeals

**18.**—(1) Sections XXII, XXIII, XXIV and XXV of the Montrose Harbour Act 1850<sup>(4)</sup>, sections 19 to 22 of the Montrose Harbour Act 1866<sup>(5)</sup> and sections 12 to 14 and 20 of the Montrose Harbour Order 1878<sup>(6)</sup> are hereby repealed.

(2) On the new constitution date, section XI of the Montrose Harbour Act 1850 shall be repealed and the Order of 1978 shall be revoked.

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<sup>(4)</sup> 1850 c.xliii.

<sup>(5)</sup> 1866 c.cii.

<sup>(6)</sup> Confirmed by 1878 c. cxv.