
STATUTORY INSTRUMENTS

1997 No. 2949

The Portland Harbour Revision Order 1997

PART V

MISCELLANEOUS AND GENERAL

Power to mortgage harbour undertaking

42. The Company may mortgage, charge or otherwise encumber the harbour undertaking or any part thereof.

Power to grant tenancies and to dispose of land

43.—(1) The Company may, for the purposes of or in connection with the management of the harbour undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbour premises for such period, at such rents and other considerations and on such terms and conditions as shall be agreed between the Company and the person taking the same.

(2) The Company may also dispose of, or grant the use or occupation of, any property held by them for the purpose of the harbour undertaking, which they consider to be surplus to that required by them for the purposes of the harbour undertaking.

Subsidiaries

44.—(1) The Company may form and promote a wholly-owned subsidiary for carrying on any activities which the Company have power to carry on under or by virtue of this Order.

(2) The Company shall secure that any company formed in exercise of the powers conferred by paragraph (1) above remains such a wholly-owned subsidiary.

(3) The Company may enter into arrangements with a company formed in exercise of the powers conferred by paragraph (1) above for the transfer to that company from the Company or from any other company so formed, in such manner and on such terms (including payments by any of the parties to the arrangements to any of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Company or of that other company which are relevant to the carrying on of the activities to be carried on by the first-mentioned company.

(4) In this article, “wholly-owned subsidiary” has the meaning given by section 736 of the Companies Act 1985(1).

Development, etc., of land

45. The Company may form and promote, or join with any other person in forming and promoting, a company for using or developing for any purpose, or carrying on any trade or business on, any land within the harbour premises.

(1) 1985 c. 6.

Local inquiries

46. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order, and subsections (2) to (5) of section 250 of the Local Government Act 1972(2) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

Defence of due diligence

- (a) 47. (1) (a) In proceedings for an offence under any provision of this Order mentioned in sub-paragraph (b) below, it shall be a defence for the defendant to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.
- (b) The provisions referred to in sub-paragraph (a) above are—
- article 12(5);
 - article 37;
 - article 38; and
 - article 41.

(2) If in any case the defence provided by paragraph (1)(a) above involves the allegation that the commission of the offence was due to the act or default of another person, the defendant shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Power to give directions as to loading or unloading of certain goods

48.—(1) The Company may designate any part of the harbour premises for the loading and unloading of any goods to which this article applies.

(2) Where pursuant to paragraph (1) above the Company have designated a place for the loading or unloading of goods of any description the harbour master may direct that goods of that description, intended to be loaded onto or unloaded from a vessel, shall not be deposited or received elsewhere than at the place so designated; and, if any person disobeys any such direction, the Company may remove the goods to the place so designated, and any expense incurred by them in so doing shall be recoverable from that person.

(3) The goods to which this article applies are goods in bulk and goods the nature or character of which is such as, in the opinion of the Company, to give rise to special risk of contamination, taint, stain, injury or danger to other goods or to persons, property or water or to necessitate the provision of special facilities for the handling thereof or for the safety, protection, welfare or accommodation of persons employed in, or in connection with, such handling.

Liability for safety of goods

49. The Company shall not be responsible for the safekeeping of goods deposited in any part of the harbour premises not specifically set apart by the Company for the purpose of warehousing.

(2) 1972 c. 70; subsection (2) has been amended by the Statute Law (Repeals) Act 1989 (c. 43), section 1(1) and Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, Part III.

Boarding of vessels

50. A duly authorised officer of the Company may, on producing his authority if so required, enter and inspect a vessel in the harbour for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw of the Company relating to the harbour, including the enforcement thereof.

Power to remove goods

51.—(1) If any goods are left on or in any part of the harbour premises 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 or, in any case where it is not reasonably practicable to contact the owner of the goods, within six hours after leaving a notice on the goods requiring their removal, the Company may cause them to be removed to their own or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(a) (2) (a) Notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.

(b) The power of the Company for preventing the removal of 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.

(3) The Company may, if they think fit, after giving seven days' notice to the owner of the goods, and shall if so required by the owner of the goods, sell or otherwise dispose of the goods, in such manner as they think fit and reimburse themselves out of the proceeds of sale, and the Company shall hold any surplus of such proceeds on trust for the person entitled thereto.

(4) In this article, “goods” includes vehicles and equipment.

Removal of vehicles and boats

52.—(1) If a vehicle or boat is left without the permission of the Company—

(a) in any place where it is likely to obstruct or interfere with the use of the harbour premises; or

(b) in any part of the harbour premises where the parking of vehicles or boats is prohibited by notice erected by the Company,

the Company may, at the risk of the owner, remove the vehicle or boat or cause it to be removed.

(2) Any notice erected under paragraph (1)(b) above shall be conspicuously posted in or close to the place to which it relates.

(a) (3) (a) Where the Company in exercise of the powers of this article remove a vehicle or boat or cause it to be removed, they shall as soon as practicable report that fact to a constable or to a police station.

(b) The expenses of and incidental to the removal of a vehicle or boat under this article shall be recoverable from any person responsible.

(4) For the purposes of paragraph (3) above “person responsible” means—

(a) the owner of the vehicle or boat at the time when it was put in the place from which it was removed under paragraph (1) above, unless he shows that he was not concerned in, and did not know of, its being put there; or

(b) any person by whom the vehicle or boat was put in that place.

(5) If the Company in exercise of the powers of this article remove a vehicle to a place not readily visible from the place whence it is so removed they shall, if and as soon as it is reasonably practicable

to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of Regulations made under section 105 of the Road Traffic Act 1988(3) at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.

(6) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour premises.

Obstruction of officers

53.—(1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who in giving such information makes a statement which he knows to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Crown Rights

54.—(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 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 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 may be considered necessary or appropriate.

Saving for Trinity House

55. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Trinity House.

Protective provisions

56. Schedule 2 to this Order shall have effect for protecting the continuing use of the harbour for various defence-related purposes.

Revocation of Dockyard Port Orders

57. On the coming into force of this Order the following Orders in Council or provisions thereof shall be revoked—

(3) 1988 c. 52.

- (a) the Dockyard Port of Portland Order 1963(4);
- (b) the Dockyard Port of Portland (Amendment) Order 1965(5);
- (c) the Dockyard Port of Portland (Amendment) Order 1967(6);
- (d) article 6 of the Dockyard Ports (Amendment) Order 1970(7);
- (e) the Dockyard Port of Portland (Amendment) Order 1973(8).

Amendment of Weymouth and Portland (Pilotage) Harbour Revision Order 1988

58.—(1) In the Weymouth and Portland (Pilotage) Harbour Revision Order 1988(9), at the end of article 3 (Extension of limits of jurisdiction for purposes of pilotage), there shall be added the following words—

“, but excluding Portland Harbour (as defined by the term “the harbour” in article 2(1) of the Portland Harbour Revision Order 1997).”.

(2) The plan deposited in connection with that order (therein called the “signed plan”) shall be treated as being amended accordingly.

Saving for Weymouth and Portland Borough Council

59. Nothing in this Order shall restrict or otherwise affect the discharge by the Council of any functions under any enactment relating to public health, environmental protection, coast protection, flood defence or land drainage.

For protection of Environment Agency

60.—(1) For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the Company and the Agency, have effect.

(2) In this article—

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means so much of any permanent or temporary work or operation authorised by or under this Order (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is situated in, on, under, over or within 16 metres of the scheme; and

“the scheme” means that part of the Portland Sea Defence Scheme which comprises an open trapezoidal drain discharging into the harbour and an outfall into the harbour by way of three culverts.

- (a) (3) (a) Before carrying out any specified work, the Company shall submit to the Agency plans of the work and such further particulars available to them as the Agency may within 14 days of the submission of the plans reasonably require.
- (b) Any such specified work shall not be carried out except in accordance with such plans as may be approved in writing by the Agency or as are settled in accordance with paragraph (7) below.

(4) S.I. 1963/1918.
(5) S.I. 1965/1871.
(6) S.I. 1967/1483.
(7) S.I. 1970/287.
(8) S.I. 1973/957.
(9) S.I. 1988/1707.

- (c) Any approval of the Agency required under this paragraph—
 - (i) shall not be unreasonably withheld;
 - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within one month of the submission of plans for approval; and
 - (iii) may be given subject to such reasonable requirements as the Agency may impose for the protection of the scheme.

(4) Without prejudice to the generality of paragraph (3) above, the requirements which the Agency may impose under that paragraph include conditions requiring the Company at their own expense when carrying out the specified works to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary to safeguard the scheme against damage or to secure that its efficiency for flood defence purposes is not impaired.

(5) Any specified work, and all protective works required by the Agency under paragraph (4) above, shall be carried out to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the carrying out of such works.

(6) The Company shall give the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after the date on which it is first brought into use.

(7) Any difference arising between the Company and the Agency under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(8) The preceding provisions of this article shall apply in relation to works or dredging licensed by the Company under this Order to be carried out by a person other than the Agency, as they apply to a specified work constructed by the Company; and, accordingly, references in those provisions to the Company shall be construed as including references to the holder of the relevant licence.