

---

STATUTORY INSTRUMENTS

---

**1998 No. 683**

**The Porthmadog Harbour Revision Order 1998**

**PART II**

**DUTIES AND POWERS**

**General powers of Council in respect of harbour**

5.—(1) The Council may, subject to the provisions of this Order, take such steps from time to time as they may consider necessary or desirable for the improvement, maintenance and management of the harbour and the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of the foregoing, the Council may—

- (a) improve, maintain, regulate and manage the harbour and, subject to the provisions of this Order, provide port facilities therein;
- (b) alter, remove and reconstruct structures and works in the harbour; and
- (c) do all other things which in their opinion are expedient to facilitate the efficient and proper carrying on of the undertaking or development of the harbour.

**Porthmadog Harbour Consultative Committee**

6.—(1) There shall be constituted a body to be known as the Porthmadog Harbour Consultative Committee, (in this article referred to as “the Committee”), which shall not be a committee of the Council.

(2) Subject to the provisions of paragraphs (3) and (5) of this article, the Committee shall consist of fifteen members of whom—

- (a) one shall be the chairman and one shall be the vice-chairman of the Culture and Leisure Committee of the Council or other such committee of the Council as may from time to time be appointed by the Council to administer the harbour;
- (b) four shall be the members of the Council elected to represent wards or electoral divisions in the community of Porthmadog;

Provided that, if any such member of the Council is a member of the Committee by reason of being the chairman or vice-chairman of a committee referred to in subparagraph (a) above, the Council shall appoint another member of the Council to the Committee;

- (c) two shall be appointed by the Council from among the other members of the Council, of whom one shall be a member elected to represent an electoral division in the area of the district of Meirionydd as it existed before 1st April 1996;
- (d) one shall be appointed by the Porthmadog Town Council from among the members of that Council;
- (e) one shall be appointed by the Porthmadog Harbour Users' Association;

- (f) one, to represent commercial interests in the harbour, shall be appointed by the Council after consultation with such persons (if any) appearing to the Council to be representative of the said interests as the Council consider appropriate;
- (g) one, to represent industrial interests in the harbour, shall be appointed by the Council after consultation with such persons (if any) appearing to the Council to be representative of the said interests as the Council consider appropriate;
- (h) one, to represent leisure interests in the harbour, shall be appointed by the Council after consultation with such persons (if any) appearing to the Council to be representative of the said interests as the Council consider appropriate;
- (i) one, to represent fishing interests in the harbour, shall be appointed by the Council after consultation with such persons (if any) appearing to the Council to be representative of the said interests as the Council consider appropriate; and
- (j) one, to represent the interests of the several owners of the freehold and leasehold interests of lands within the harbour (other than the Council), shall be appointed by the Council after consultation with those owners.

(3) If it appears to the Council in the case of the appointment referred to in sub-paragraph (e) of paragraph (2) above that the body by whom the appointment is to be made has refused or failed to appoint a member within two months after being requested by the Council to do so, or if the said body has ceased to have an identifiable existence, the appointment in question shall be made by the Council to be representative of the interests represented or formerly represented by the said body as the Council consider appropriate.

(4) The Council may from time to time co-opt additional members to the Committee (but so that such additional members shall not at any time exceed three in number) who in their opinion have special knowledge or experience that would be of value to the Committee, and such members will be eligible to serve during the period specified by the Council at the time of their co-option.

(5) It shall be the function of the Committee to consider and advise the Council upon such matters relating to the management, control and development of the harbour as may from time to time be referred to them by the Council for consideration.

(6) It shall be the duty of the Council, in so far as it is reasonably practicable to do so, to consult the Committee on all matters which, in the opinion of the Council, substantially affect the management, control and development of the harbour; and the Council shall take into consideration any advice relating thereto that may be given by the Committee, but the Council shall not be bound to act in accordance with such advice.

(7) The first meeting of the Committee shall be held as soon as reasonably practicable after the coming into operation of this Order and on such day and at such time and place as may be appointed by the Council, who shall make arrangements for notice of the meeting to be sent by post to each member of the Committee not less than 14 days before the day so appointed.

(8) The Committee shall annually elect a Chairman and Vice-Chairman from among those of their number who are members of the Council.

(9) The Committee shall meet at least twice a year, and all meetings shall be convened by the Council.

(10) The Council shall determine the Committee's quorum and procedure.

(11) The Council shall arrange and ensure that minutes are kept of the proceedings of every meeting of the Committee.

(12) The Council shall upon request make available to the Committee such documents and information pertaining to their duties and powers in relation to the harbour as the Committee may, in the opinion of the Council, reasonably require for the proper discharge of their functions.

(13) The Council shall provide the Committee with such services and accommodation as appear to the Council to be appropriate.

### **Harbourmaster's powers**

7.—(1) In addition to the powers conferred on him by section 52 of the Act of 1847 as incorporated with this Order the harbourmaster may—

- (a) give directions prohibiting the mooring of vessels in any particular part or parts of the harbour; and
- (b) notwithstanding the provisions of section 33 of the said Act, impose terms and conditions upon which a passenger boat, hovercraft or hydrofoil vessel may enter the harbour.

(2) The said section 52 as incorporated with this Order shall not be construed so as to require the harbourmaster in an emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section; but in pursuance of that section for all or any of the purposes thereof, the harbourmaster may in an emergency give general directions applicable to all vessels or to particular classes of vessels.

(3) Section 53 of the Act of 1847 as incorporated with this Order shall not be construed so as to require the harbourmaster to serve a notice in writing of his direction upon the master of a vessel, and such directions may be given orally or otherwise communicated to the master on any occasion when it is not reasonably practicable for a written notice to be served on the master.

### **Power to dredge**

8.—(1) The Council may from time to time deepen, dredge, scour, cleanse, alter and improve the bed and foreshore of the harbour.

(2) No materials taken up or collected in the exercise of the powers of this article shall be deposited below the level of high water except in such position as the Secretary of State may approve and subject to such conditions or restrictions as he may impose.

### **Council may provide dredgers, tugs, etc.**

9.—(1) The Council may from time to time purchase, lease, contract for or hire and may maintain and use dredgers, tugs, hoppers, barges or other powered craft—

- (a) as may be necessary or expedient for or in relation to any of the purposes mentioned in article 8 of this Order; or
- (b) for the use and accommodation of vessels within the harbour, and for this purpose they may let such craft.

(2) In addition to the said purposes the Council may purchase, lease, hire, provide and may maintain and use all such dredging and other machines, engines, craft, machinery and appliances as may be necessary or expedient for the purposes of their duties or powers in respect of the harbour.

### **Power to provide boating facilities**

10. The Council may construct, lay down, maintain and operate in the harbour such works for the provision of boating or marina facilities as they may consider requisite.

### **Powers as to moorings, etc.**

11.—(1) The Council may place, lay down, maintain and use moorings in the harbour and on land adjoining the waters of the harbour in or in respect of which they have an interest or right entitling them to do so.

(2) The Council may demand, take and recover in respect of any vessel using any of the moorings provided by the Council under this article such reasonable charges as may from time to time be prescribed by the Council.

- (a) (3) (a) The Council may grant to a person a licence to place, lay down, maintain or use existing and future moorings in the harbour.
- (b) Nothing in any such licence shall entitle a person to place, lay down, maintain and use any mooring on land in or in respect of which neither he nor the Council have an interest or right entitling him or them to do so.
- (c) The Council shall not refuse to grant a licence to a person who has an interest or right in respect of land and in respect of which the Council has no such interest or right to place, lay down, maintain and use existing moorings on that land unless they are satisfied that the placing, laying down, maintenance or use of the moorings to which the application relates would constitute a danger to or interfere with the navigation of vessels in the harbour or would in the opinion of the Council prejudice the good management and administration of the harbour.

(4) Any licence granted under paragraph (3) above shall be subject to such terms and conditions as may be specified in the licence.

(5) The Council may charge a reasonable fee for granting a licence under paragraph (3) above.

(6) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in placing, laying down, maintaining or using moorings; or
- (b) intentionally pulls up or removes any moorings or any poles or stakes driven into the ground for the purpose of such moorings; or
- (c) places, lays down, maintains or uses in the harbour any mooring not provided or licensed by the Council under this article; or
- (d) without reasonable excuse causes a vessel to be moored except at a mooring provided or licensed by the Council under this article or at a quay, jetty, slipway or other work;

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

(7) If—

- (a) any person contravenes sub-paragraph (c) of paragraph (6) above the Council may remove the mooring in question and recover from that person the expenses incurred in so doing;
- (b) any vessel is moored at a mooring in contravention of sub-paragraph (d) of paragraph (6) above the Council may remove that vessel to another mooring and such removal shall be carried out at the expense and risk of the owner of the vessel.

### **Powers with respect to disposal of wrecks**

**12.—(1)** In its application to the Council section 252 of the Merchant Shipping Act 1995(1) (which confers on harbour authorities within the meaning of that Act powers with respect to, any vessel sunk, stranded or abandoned in, or in or near any approach to, any harbour or tidal water under the control of a harbour authority in such manner as to be, or be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service in that harbour or water or approach thereto) shall have effect in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

---

(1) 1995 c. 21.

(2) Subject to paragraph (3) below and to any enactment for the time being in force limiting his liability, the Council may recover from the owner of any vessel in relation to which they have exercised their powers under the said section 252 any expenses reasonably incurred by them under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

- (a) (3) (a) Except in a case which is in the opinion of the Council a case of emergency, paragraph (2) above shall not apply in relation to any vessel unless before exercising in relation to that vessel any of the powers conferred on them by the said section 252, other than the power of lighting and buoys, the Council have given to the owner of the vessel not less than forty-eight hours' notice of their intention to do so.
- (b) If before the notice expires the Council receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, he shall be at liberty to do so; and the Council shall not exercise the powers in the said section 252 in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by the Council.

(4) Notice under paragraph (3) above to the owner of any vessel may be served by the Council either by delivering it to him or by sending it to him by the recorded delivery service addressed to him at his last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Council, by displaying the notice at the harbour offices, Porthmadog, for the period of its duration.

(5) In this article the word "owner", in relation to any vessel, means the person who was the owner of the vessel at the time of the sinking, stranding or abandoning thereof, and for the purposes of this article the word "vessel" includes any aircraft.

#### **Power to deal with unserviceable vessels**

**13.—**(1) In addition to the powers conferred on the harbourmaster by section 57 of the Act of 1847 and on the Council by virtue of the Merchant Shipping Act 1995 and by other provisions of this Order, the Council may remove, sell, destroy or otherwise dispose of any vessel laid by or neglected as unserviceable in, or on land adjoining, the waters of the harbour.

(2) The Council may retain out of the proceeds of sale of any such vessel, or any part thereof, any expenses incurred by them in respect of the vessel or in marking, buoys, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbourmaster under section 57 of the Act of 1847, and shall pay the surplus, if any, to the person entitled thereto.

(3) If the proceeds of sale are insufficient to reimburse the Council for the said expenses, or there is no sale, the Council may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a debt.

(4) Except in the case of emergency, the Council shall, before exercising their powers under this article, give seven clear days' notice in writing of their intention to do so to the registered owner of the vessel and by advertisement in each of three successive weeks in a local newspaper or, if the owner or his place of business or abode is not known to the Council or is outside the United Kingdom, by displaying the notice at the harbour offices, Porthmadog, for the period of its duration.

#### **Power to remove goods**

**14.—**(1) If any goods are left on or in any part of the harbour estate the Council may require the owner of the goods to remove them.

(2) If the goods are not removed within six hours after the Council have so required, the Council 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 of the owner.

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

(4) The powers of the Council to prevent the removal of goods until the cost of the removal and charges payable by the owner have been paid shall extend and apply to any goods removed or placed in store under the powers of this article.

### **Power to provide parking places**

**15.** The Council may provide facilities (including shelters) within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

### **Removal of vehicles, etc.**

**16.**—(1) If a vehicle or vessel is left without the permission of the Council—

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour; or
- (b) in any part of the harbour where the parking of vehicles or vessels is prohibited by notice erected by the Council;

the Council may remove the vehicle or vessel 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 Council in exercise of the powers of this article remove a vehicle or vessel or cause it to be removed they shall as soon as practicable inform the police.
- (b) The expenses of and incidental to the removal of a vehicle or vessel under this article shall be recoverable by the Council from any person responsible.

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

- (a) the owner of the vehicle or vessel 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 vessel was put in that place.

(5) If the Council 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 in whose name the vehicle was, at the time it was removed, registered under the Vehicle Excise and Registration Act 1994(2) 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 estate.

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

**17.**—(1) In case of injury to or destruction or decay of a tidal work or any part thereof, the Council shall as soon as is reasonably practicable notify the Trinity House and shall lay down such buoys,

---

(2) 1994 c. 22.

exhibit such lights and take such other steps for preventing danger to navigation as the Trinity House shall from time to time direct.

(2) If the Council fail to notify the Trinity House as required by paragraph (1) above, or to comply in any respect with a direction given under the said paragraph they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine; but it shall be a defence for the Council to prove that all due diligence was exercised to avoid the commission of the offence.

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

**18.**—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof 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 Council 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 thereof, in any notice under paragraph (1) above.

(3) If, on the expiration of thirty days from the date when a notice under paragraph (1) above is served upon the Council, 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 Council.

### **Survey of tidal works**

**19.** 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 recoverable from the Council.

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

**20.**—(1) The Council 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 the Trinity House shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under paragraph (1) above they shall be liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

(3) In proceedings for an offence under paragraph (2) above, it shall be a defence for the Council to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) If in any case the defence provided by paragraph (3) above involves an allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without the leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has 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 its possession.