

1999 No. 3444

HARBOURS, DOCKS, PIERS AND FERRIES

The Workington Harbour Revision Order 1999

Made - - - *22nd December 1999*

Coming into force *12th January 2000*

Whereas the Cumbria County Council (being the harbour authority for Workington Harbour) have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas no objection to the application has been made pursuant to paragraph 3(a) of Schedule 3 to the said Act(b);

And whereas the Secretary of State for the Environment, Transport and the Regions is satisfied as mentioned in subsection (2)(b) of the said section 14;

Now, therefore, the Secretary of State for the Environment, Transport and the Regions (being the appropriate Minister under subsection (7) of the said section 14(c)), in exercise of the powers conferred by that section and now vested in him(d), and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1.—(1) This Order may be cited as the Workington Harbour Revision Order 1999 and shall come into force on 12th January 2000.

(2) The Workington Harbour Acts and Order 1957 to 1988 and this Order may be cited together as the Workington Harbour Acts and Orders 1957 to 1999.

Interpretation

2. In this Order words and expressions to which a meaning is assigned by the Workington Harbour Act 1974 have the same meaning as in that Act, and—

“general direction” means a direction authorised by article 3 (General directions to vessels) below;

“the harbour approaches” means the area hatched black on the signed plan;

“the signed plan” means the plan prepared in triplicate signed by the Head of Ports Division, Department of the Environment, Transport and the Regions, two copies of which have been deposited at that Department and one copy of which has been deposited at the offices of the Council at the Harbour Office, Prince of Wales Dock, Workington, Cumbria EA14 2JH;

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

“length” in relation to vessel means the overall length from the foreside of the foremost fixed permanent structure to the aftside of the aftermost fixed permanent structure of the vessel;

(a) 1964 c. 40: section 14 amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

(b) Schedule 3 was amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 4(2) to (7) and 12, by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 10 and Schedule 4 Part II, and by S.I. 1988/1336 and S.I. 1996/1946.

(c) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).

(d) S.I. 1981/238 and S.I. 1997/2871.

“special direction” means a direction authorised by article 5 (Special directions to vessels) below or by section 52 of the Act of 1847.

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990(a);
- (b) any other person who exercises functions under the Land Drainage Act 1991(b) or the Water Resources Act 1991(c);
- (c) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(d);
- (d) any operator of a telecommunication code system.

General directions to vessels

3.—(1) The Council may, after consultation with the Chamber of Shipping in each case of an exercise of the powers, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and the harbour approaches and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the harbour approaches which vessels are to use, or refrain from using, for movement or mooring;
 - (b) for securing that vessels move only at certain times or during certain periods;
 - (c) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.
- (2) Directions given under paragraph (1) above may apply—
- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
 - (b) to the whole of the harbour and the harbour approaches, or to a part designated, or the designation of which is provided for, in the direction; and
 - (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) above.

(3) The Council may, after consultation with the Chamber of Shipping, revoke or amend directions given under this article.

Publication of general directions

4.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Council as soon as practicable once in Lloyd’s List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies thereof may be inspected and bought, and the price thereof.

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the Council consider appropriate.

Special directions to vessels

5.—(1) In addition to the directions which he may give under section 52 of the Act of 1847 the harbour master may give a direction under this article in respect of a vessel anywhere within the harbour or the harbour approaches—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(a) 1990 c. 8.
(b) 1991 c. 59.
(c) 1991 c. 57.
(d) 1949 c. 74.

(3) The harbour master may revoke or amend a special direction.

Master's responsibility to be unaffected

6. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

7.—(1) The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) above, it shall be a defence for the person charged to prove that he had reasonable grounds for believing that non-compliance with the direction in question was necessary to secure the safety of any vessel or to prevent injury to any person or damage to any vessel or cargo, or that in the circumstances compliance was impracticable.

Enforcement of directions

8.—(1) If a special direction is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel.

Repeal

9. Section 53 of the Act of 1847 shall cease to apply to the harbour undertaking and subsection (2) of section 32 (Directions of harbour master) of the Workington Harbour and Dock (Transfer) Act 1957^(a) is hereby repealed.

Restriction of dredging

10.—(1) Subject to paragraph (4) below, no person other than the Council shall 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 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 12 of this Order.

(2) 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 4 on the standard scale.

(3) The Council may by notice require a person who contravenes this article to abate or rectify, within a reasonable time specified in the notice, any 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 Council may carry out the work so required and recover from him the cost of so doing.

(4) Nothing in this article shall apply to—

- (a) any operations specifically authorised by any enactment; or
- (b) any operations of a statutory undertaker.

Control of certain operations of statutory undertakers

11.—(1) This article applies to any dredging in the harbour by a statutory undertaker on, under or over tidal waters or tidal land below the level of high water in the harbour, not being dredging which is specifically authorised by any enactment.

(2) Subject to paragraph (3) below, a statutory undertaker shall not carry out any dredging to which this article applies unless it has given notice of its intention to do so to the Council and has supplied the Council 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 shall inform the Council of the dredging as soon as reasonably practicable.

(a) 1957 c. xxxii.

(4) Any dredging to which this article applies shall be carried out subject to any directions which may from time to time be given by the Council to the statutory undertaker, being directions such as in the opinion of the Council are necessary for the avoidance of danger and the prevention, so far as reasonably possible, of interference with navigation in the carrying out of such dredging.

(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 dredging

12.—(1) The Council may, upon such terms and conditions as they think fit, grant to any person, 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 Council 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 Council may require modifications in the plans, sections and particulars so submitted.

(3) The Council may require an applicant for a dredging licence, on making his application, to pay a reasonable charge in respect of the administrative expenses of dealing with the application, and different charges may be required to be paid in relation to different cases or classes of case.

(4)(a) On receipt of an application for a dredging licence the Council shall serve on the Environment Agency a copy of the application and all plans, sections and particulars incidental thereto.

(b) The Council shall consider such observations as the Environment Agency may submit to the Council within six weeks after service on the Environment Agency of the application and particulars as aforesaid, and shall not grant a dredging licence before the expiry of that period.

(c) In granting any dredging licence in response to such an application the Council shall impose on the applicant such terms and conditions as give effect to such reasonable requirements to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for land drainage purposes is not impaired, as the Environment Agency may, within the said period, make in any observations to the Council.

(d) The provisions of sub-paragraph (c) above are subject to the Council's duty under article 13(5) of this Order to give effect to any decision or requirement given or made by the Secretary of State under article 13(4) of this Order.

(5) Where the Council refuse to grant a dredging licence which has been applied for they shall give reasons in writing for the refusal.

(6) Where the Council grant a dredging licence upon terms and conditions or require any modifications in the plans and particulars, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

(7) In the carrying out of operations in pursuance of a dredging licence, the holder of the licence shall not—

(a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by a statutory undertaker;

(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 person or body concerned.

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

(9) Any materials (other than a wreck within the meaning of Part IX of the Merchant Shipping Act 1995^(a)) taken up or collected in pursuance of the licence shall be the property of the holder of the licence, who may, subject to paragraph 10 below—

(a) use, remove, sell or otherwise dispose of; or

(b) lay down or deposit the materials as they think fit.

(10) No such materials shall—

(a) be disposed of in contravention of the provisions of any enactment relating to the keeping or disposal of waste; or

(a) 1995 c. 21.

- (b) 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.

Appeals in respect of dredging licences

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

- (a) a refusal of the Council to grant a licence; or
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Council in the plans, sections and particulars submitted by the applicant;

may within 28 days from the date on which the Council notify the applicant of their decision, or the date on which the Council are, under article 12(8) 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) A person who appeals under paragraph (1) above shall send to the Council a copy of his notice of appeal.

(b) The Council may, within 28 days from the receipt of the notice, make to the Secretary of State representations in writing on the appeal; and, if they do, they shall as soon as reasonably practicable send a copy of their representations to the appellant.

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

- (a) dismiss the appeal; or
- (b) require the Council 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 Council shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (4) above.

Registration of small vessels

14.—(1) In this article “small vessel” means any vessel of less than 24 metres in length.

(2) No person shall keep, navigate or use a small vessel within the harbour unless the owner of the vessel has registered the vessel with the harbour master and supplied such information as the harbour master may reasonably require, including the name and address of the owner, details of the vessel and the place where the vessel is normally kept, if that place is within the harbour, and the purpose for which the vessel is or is to be kept, navigated or used within the harbour.

(3) The owner of a small vessel shall forthwith give notice to the harbour master if the vessel is sold or its ownership is otherwise transferred or if there is any other alteration in the particulars which have been registered.

Byelaws

15. The purposes for which the Council may make byelaws under section 23 of the Workington Harbour Act 1974 shall extend to requiring vessels to carry specified safety equipment and apparatus.

Boarding of vessels

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

Crown rights

17.—(1) Nothing in this Order shall affect prejudicially any estate, right, power, privileges, 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 shall be considered necessary or appropriate.

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

Stephen Reeves
Head of Ports Division in the Department of the Environment,
Transport and the Regions

22nd December 1999

EXPLANATORY NOTE

(This note is not part of the Order)

This Order–

- (a) authorises Cumbria County Council (“the Council”) to give general and special directions to vessels within Workington Harbour (“the Harbour”) and its approaches;
- (b) authorises the control and licensing of dredging in the Harbour;
- (c) provides for the registration of small vessels using the Harbour;
- (d) extends the powers of the Council to make byelaws in relation to the Harbour; and
- (e) authorises the boarding of vessels in the Harbour by officers of the Council.

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