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STATUTORY INSTRUMENTS

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**1994 No. 2298**

**The Ventnor Harbour Revision Order 1994**

**PART III**

**General**

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

14.—(1) The Council may, subject to the provisions of this Order, take such steps from time to time as they may consider necessary for the improvement, maintenance and management of the harbour and the facilities (including recreational 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, manage, mark and light the harbour;
- (b) do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the harbour.

**Power to dredge**

15.—(1) The Council may from time to time deepen, dredge, scour, cleanse and improve the bed of the sea and foreshore of the harbour and the approaches thereto and may blast any rock within the harbour or in such approaches.

(2) Subject to paragraph (3) below, all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council think fit.

(3) No such materials shall be laid down or deposited in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

**Power to appropriate lands and works for particular trades etc.**

16.—(1) The Council may from time to time for the purpose of or in connection with the management of the undertaking set apart and appropriate any part of the undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall make use of any part of the undertaking so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council; and—

- (a) the harbour master or, as the case may be, such officer, may order any person or vessel making use thereof without such consent to leave or be removed; and

- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Act of 1847 shall extend and apply mutatis mutandis to and in relation to any such vessel.

### **General directions to vessels**

17.—(1) The Council may, after consultation with the Chamber of Shipping of the United Kingdom 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 approaches thereto 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 approaches thereto 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 approaches thereto, 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 of the United Kingdom revoke or amend directions given under this article.

### **Publication of general directions**

18.—(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**

19.—(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 requiring any vessel anywhere within the harbour or the approaches thereto to comply with a requirement made in or under a general direction.

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

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

### **Master's responsibility to be unaffected**

20. 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**

21. 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.

### **Enforcement of directions**

22.—(1) Without prejudice to any other remedy available to the Council, 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 a 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.

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

23.—(1) In their application to the Council sections 530 and 532 of the Merchant Shipping Act 1894<sup>(1)</sup> (which confer on bodies which are harbour authorities within the meaning of that Act powers with respect to, and with respect to anything in or on, any vessel sunk, stranded or abandoned in such manner as to be an obstruction or danger to navigation in a harbour or in any approach thereto) shall have effect in relation to the harbour and the approaches thereto in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to the provisions of 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 530 or 532 (being a vessel sunk, stranded or abandoned after the commencement of this Order) any expenses reasonably incurred by them under those sections in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of those sections.

(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 530, other than the power of lighting and buoying, the Council have given to the owner of the vessel not less than 48 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 530 or 532 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.

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(1) 1894 c. 60.

(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 registered post or 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, or is not in the United Kingdom, by displaying the notice at the office of the Council for the period of its duration.

(5) In this article the expression “owner”, in relation to any vessel, means the person who was the owner of the vessel at the time of the sinking, stranding or abandonment thereof.

(6) The powers conferred on the Council by this article shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks within the harbour and the approaches thereto.

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

**24.**—(1) The Council may provide, place, lay down, maintain, use and have moorings for vessels—

- (a) on land owned or leased by the Council or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Council such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2) above.

- (a) (4) (a) The Council may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring him within 28 days to remove the mooring so as to enable the Council to provide, place or lay down moorings in accordance with paragraph (1) above.
- (b) The Council shall offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by them under paragraph (1) above as soon as such mooring has been laid down.
- (c) If any person fails to comply with a notice given by the Council under this paragraph, the Council may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

- (a) (5) (a) The Council may from time to time grant to a person a licence to place, lay down, maintain, use and have existing and future moorings, for vessels in the harbour.
- (b) Nothing in any such licence shall entitle a person to place, lay down, maintain, use and have any mooring on land not owned or leased by him or by the Council or in which he has no appropriate interest.
- (c) Any such licence shall be valid only for a period of one year commencing with its date.
- (d) The Council may charge for such a licence such reasonable fee as the Council may from time to time prescribe.

(6) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings; or
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof; or

- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Council under this article or at a quay, jetty, slipway or other work or to land owned or leased by the Council; or
- (d) places, lays down or maintains in the harbour any mooring not provided or licensed by the Council under this article; shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) If any person contravenes paragraph (6)(d) above, the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.

(8) In this article—

“mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels;

“vessel” includes houseboat.

### **Power to remove goods**

**25.**—(1) If any goods are left in any part of the harbour, 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 or, in any case where it is not reasonably practicable for the Council to contact the owner of the goods, within six hours after the leaving by the Council of written notice on the goods requiring their removal, 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 and risk of the owner.

(3) The Council 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 Council shall hold any surplus of such proceeds of sale on trust for the person entitled thereto.

(4) In this article “goods” does not include fish or fishing tackle.

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

**26.**—(1) The Council may designate any part of the harbour for the loading and unloading of any goods to which this article applies.

(2) Where pursuant to paragraph (1) above the Council 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 Council 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 Council, 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 but not including fish or fishing tackle.

### **Parking places**

**27.** The Council may provide facilities 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 use of such facilities.

### Removal of vehicles etc.

- 28.**—(1) If a vehicle or boat 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 authorised works; or
  - (b) in any part of the authorised works where the parking of vehicles or boats is prohibited by notice erected by the Council; the Council 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 Council 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.
  - (c) For the purposes of this paragraph “person responsible” means—
    - (i) 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
    - (ii) any person by whom the vehicle or boat was put in that place.
- (4) 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 for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 1971(2) or any other regulations having the like effect for the time being in force, 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.
- (5) 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 authorised works.

### Byelaws as to harbour

- 29.**—(1) Subject to the provisions of this Order the Council may make, in relation to the harbour, byelaws for all or any of the following purposes—
- (a) for regulating the exercise of the powers vested in the harbour master;
  - (b) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;
  - (c) for regulating the conduct of all persons in the harbour, not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
  - (d) for regulating the placing and maintenance of moorings in the harbour;
  - (e) for preventing and removing obstructions or impediments within the harbour;
  - (f) for preventing nuisances in the harbour;
  - (g) for regulating the launching of vessels within the harbour;
  - (h) for regulating or preventing the use in the harbour or on board any vessel therein of fires, lights or any other equipment, tools or appliances which the Council consider involve a risk of fire;

- (i) for prohibiting the use of or regulating the movement, speed and parking of vehicles within the harbour;
- (j) for requiring the use of effectual silencers on vessels and the control of noise generally in the harbour;
- (k) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
- (l) for prescribing the lights and signals to be exhibited or made—
  - (i) by vessels aground within the harbour;
  - (ii) by devices used for marking obstructions within the harbour;
  - (iii) at the entrance to any pier or other work for assisting navigation or mooring within the harbour;
- (m) for—
  - (i) regulating fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, or other installation or structure of any kind within the harbour;
  - (ii) regulating or preventing bathing, and for securing the protection of bathers, within the harbour;
  - (iii) regulating or preventing the use by vehicles of the foreshore within the harbour;
- (n) for preventing the disposal of any waste matter except at places or in a manner prescribed by the Council.

(2) In this article “signals” includes sound signals and different byelaws may be made under this article in relation to different classes of vessels and vehicles.

(3) Byelaws made under this article may provide for the imposition on any person offending against any byelaw of a fine on summary conviction not exceeding level 4 on the standard scale.

### **Procedure for byelaws**

- (a) **30.** (1) (a) The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972(3) shall apply to all byelaws made by the Council under this Order.
  - (b) In its application to byelaws made under this Order subsection (7) of the said section 236 shall, subject to sub-paragraph (c) below, be construed as if it had been amended by the insertion of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.
  - (c) Where the confirming authority proposes to make a modification which appears to him to be substantial, then—
    - (i) he shall inform the Council and require them to take any steps he thinks necessary for informing persons likely to be concerned with that modification; and
    - (ii) he shall not confirm the byelaws until there has elapsed such period as he thinks reasonable for the Council and other persons who have been informed of the proposed modification to consider and comment on it.
- (2) The confirming authority for the purposes of this article and of the said section 236 in its application to byelaws made under this Order shall be the Secretary of State.

### **Power to lease etc. and to dispose of surplus land**

31.—(1) The Council may, for the purposes of or in connection with the management of the undertaking, lease or grant the use or occupation of, or any right or interest in, or over, any lands, works, buildings, equipment or other property within the harbour for such period and on such terms and conditions as shall be agreed between the Council and the person taking the same.

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

### **Charges for services or facilities**

32. In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Council may demand, take and recover such reasonable charges for services and facilities provided by them at the harbour as they may from time to time determine.

### **Payment of charges**

33.—(1) A charge which the Council are for the time being authorised to demand, take and recover in respect of a vessel or goods or otherwise shall be payable before the removal from the harbour of any vessel or goods in respect of which they are payable, and may be demanded, taken and recovered by such persons, at such places, at such times and under such conditions as the Council may from time to time specify in their published list of charges.

(2) Charges payable to the Council shall be payable by the owner of any vessel or goods in relation to which the charges are payable.

(3) Where a charge payable to the Council may be recovered by them from more than one person, the persons from whom it may be recovered shall be jointly and severally liable.

### **Deposit for charges**

34. The Council may, if they think fit, require any person who is or may become liable to pay charges to the Council to deposit with their collector, or to guarantee, such sum as in the opinion of the Council is reasonable having regard to the probable amount of the charges.

### **Recovery of charges**

35. In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with this Order (and, in a case where the master of a vessel in respect of which a charge is payable to the Council refuses or neglects to pay the same or any part thereof, whether or not the Council's collector has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Council may recover any dues, rates, rents or other charges payable to them as a debt in any court of competent jurisdiction.

### **Boarding of vessels**

36. A duly authorised officer of the Council may, on producing if so required his authority, 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 Council relating to the harbour, including the enforcement thereof.



### **Jurisdiction of justices**

**37.** For the purposes of this Order and of any byelaw made under this order, the jurisdiction of the justices of the peace for the county of Isle of Wight shall extend throughout the harbour and its approaches.

### **Crown rights**

**38.** Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Council to take, use or in any manner interfere with any part of the shore or bed of the sea or any river, channel, creek, bay or estuary or any land, hereditaments, or rights of whatsoever description 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, on behalf of Her Majesty, first had and obtained for that purpose.

### **Repeals**

**39.**—(1) Subject to paragraph (2) below, the Ventnor Local Board Act 1884<sup>(4)</sup> and the Ventnor Pier Order 1910<sup>(5)</sup>, so far as they are not already repealed, are hereby repealed.

(2) Notwithstanding paragraph (1) above, if any part of the works authorised by the said Act and the said Order is still in existence when this Order comes into force, the provisions of that Act and of that Order shall remain in force in relation to that part so far as may be necessary to secure its removal and to prevent any danger to navigation.

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(4) 1884 c.cxviii.

(5) Confirmed by 1910 c.lxxi.