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STATUTORY INSTRUMENTS

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**2001 No. 3627**

**The South Hampshire Rapid Transit Order 2001**

**PART II**

**WORKS PROVISIONS**

*The Tunnel*

**Additional powers for tunnel**

**21.**—(1) Without prejudice to the other powers conferred by this Order or otherwise available to it, the undertaker may within the tunnel area for the purposes of or in connection with the construction or maintenance of the tunnel and notwithstanding any interference thereby with any public or private rights—

- (a) alter, relocate or replace any tidal work,
- (b) carry out excavations and clearance, dredging, deepening, dumping and pumping operations,
- (c) use, appropriate and dispose of any materials (including liquids but excluding any wreck within the meaning of the Merchant Shipping Act 1995(1)) obtained by it in carrying out any such operations,
- (d) remove or relocate any mooring,
- (e) remove and, relocate any vessel or structure sunk, stranded or abandoned or moored or left (whether lawfully or not),
- (f) temporarily moor or anchor vessels and structures,
- (g) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of the harbour,
- (h) construct, place, maintain and remove temporary works and structures,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of urgency, the undertaker will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (1)(d) or (e) above before the exercise of that power.

**Prohibitions within tunnel area**

**22.**—(1) Notwithstanding anything in any other enactment or rule of law but subject to the provisions of this article and paragraph 10 of Schedule 7, the Queen's Harbour Master shall, at the request of the undertaker and at the undertakers' expense, at any time when it appears to the undertaker necessary or convenient for the purposes of the construction or maintenance of the tunnel,

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(1) 1995 c. 21.

by direction close the whole or any part of the tunnel area to navigation by all vessels or by any class of vessel.

(2) Subject to paragraph (3)—

- (a) a direction under paragraph (1) above shall specify the duration of the closure, the part of the harbour affected and the vessels to which it applies; and
- (b) the written consent of the Secretary of State shall be required to the giving of any direction which prohibits, or has the effect of prohibiting, the passage of any vessel through the tunnel area—
  - (i) whether in combination with any other direction already given (other than any which are abandoned) or not, at any time other than during six 29 hour periods each commencing at 2300; or
  - (ii) after 0700, during any of those six 29 hour periods, for more than three periods each of which shall be no longer than three hours and shall be separated from any other such period by an interval of no less than three hours.

(3) The duration of a closure under this article may be extended by the Queen's Harbour Master until he is satisfied that any navigation channel to be opened following the closure has adequate depth and is free of obstruction.

(4) A person may not, without the written consent of the undertaker, within any part of the tunnel area, during a period when it is closed to navigation under this article—

- (a) navigate any vessel or cause or permit a vessel to be moored if the vessel concerned is subject to the closure,
- (b) lay down or place any mooring or apparatus, including mains, sewers, drains and cables, or
- (c) undertake or cause or permit any other operation or activity,

unless he does so in compliance with any direction which the Queen's Harbour Master has given either in an emergency or for military operational requirements which the Queen's Harbour Master is satisfied it is not reasonably practicable to fulfil at any other time.

(5) Any person who contravenes the requirements of paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Except in an emergency, the Queen's Harbour Master shall at the undertaker's expense publish notice of any direction given under paragraph (1) in a newspaper circulating in the city of Portsmouth not less than 14 days before the direction is to take effect.

(7) In making a request pursuant to paragraph (1), the undertaker shall ensure that no more of the tunnel area is closed to navigation at any time by all vessels, or by any class of vessel, than is at that time necessary in the circumstances.

(8) If complete closure of the tunnel area to all vessels or to any particular class of vessels is necessary at any time, the undertaker shall take all reasonable steps to secure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the tunnel area.

(9) Without prejudice to the provisions of article 36 (application of Part I of the Compulsory Purchase Act 1965) neither the undertaker nor the Queen's Harbour Master shall be liable for any costs, damages or expenses whatsoever incurred by any person as a result, directly or indirectly, of any closure of the tunnel area under this article.

(10) A direction given under this article may be varied or revoked by a subsequent direction given under this article.

**Protection of tunnel, etc.**

23.—(1) A person may not without the consent in writing of the undertaker (which may be given subject to conditions)—

- (a) use, for the purpose of landing or embarking persons or landing or loading goods from or into any vessel, the tunnel, any of the tunnel units, any tunnel approach works or any work constructed for the purposes of or in connection with the tunnel pursuant to this Order;
- (b) interfere with the tunnel, any of the tunnel units, any tunnel approach works or any backfilling or scour protection provided for the purposes of or in connection with the tunnel;
- (c) remove, move or otherwise interfere with any such work or any machinery, apparatus, tools or other things in use or intended for use in constructing the tunnel; or
- (d) moor any vessel within 50 metres (measured horizontally) of the tunnel.

(2) A person who without reasonable excuse contravenes paragraph (1) above, or fails to comply with any conditions attached to a consent given by the undertaker under that paragraph, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In this paragraph—

“tunnel approach works” means works for providing access to the tunnel on either side of the river; and

“tunnel units” means sections of concrete, steel or other material (or combination of materials) designed to be attached together so as to constitute the framework of the tunnel.

**As to Portsmouth to Gosport ferry, etc.**

24.—(1) Subject to paragraphs (2) and (3) below and except as may otherwise be agreed in writing between the undertaker and the harbour company, if the undertaker in exercising its powers under article 35, article 42 or any other provision of this Order, takes possession of the Portsea landing-place or the site of the Portsea landing-place, it shall assume and may exercise, until such time as it may by agreement with the harbour company permanently reinstate or replace the Portsea landing-place to the reasonable satisfaction of the harbour company, all of the powers conferred upon the harbour company by the Portsea Harbour Company Act 1984(2) in relation to the landing-place and shall be subject to all the restrictions, liabilities and obligations in relation to the landing-place to which the harbour company is subject and shall perform the functions of the harbour company under the Act.

(2) Part I of Schedule 2 (protection of British Railways Board and Sealink U.K. Limited) to the Portsea Harbour Company Act 1984 shall not apply during any period during which the undertaker has assumed responsibility for the Portsea landing-place pursuant to paragraph (1) or otherwise in relation to anything done under this Order.

(3) Notwithstanding anything in the Portsea Harbour Company Act 1984 or any other enactment or rule of law, the undertaker may, during any period when it has assumed responsibility for the Portsea landing-place pursuant to paragraph (1) above and upon giving not less than 28 days' notice in a newspaper circulating in the area (which notice may be given in advance of the undertaker assuming responsibility for it), temporarily close the whole or any part of the Portsea landing-place for the purposes of or in connection with the construction of the authorised works.

(4) Section 6 (limits of jurisdiction) of the Portsea Harbour Company Act 1984 shall be amended as follows—

- (a) in section 2 (interpretation), the definition of “the signed plan” shall be omitted;

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(2) 1984 c. xviii.

- (b) in subsection (1) of section 6 (limits of jurisdiction), the words “the area which is shown coloured pink on the signed plan and which is” shall be omitted and, at the end, there shall be inserted the words “but excluding any part of that area within 15 metres of any part of Work No 8A of the South Hampshire Rapid Transit Order 2001 as the same is constructed.”
- (5) Schedule 2 (protective provisions) of the Portsea Harbour Company Act 1984 shall be amended by the insertion at the end of the following new Part—

### “PART III

#### FOR PROTECTION OF TUNNEL

Nothing in this Act shall authorise the harbour company to do anything, or permit anything to be done, to or affecting the tunnel authorised by the South Hampshire Rapid Transit Order 2001 or any land vested in the undertaker (as defined in that Order) in connection with that tunnel, without the consent in writing of the undertaker.”.

(6) In section 48 (management of ferry works and lands, etc.) of the Hampshire Act 1983<sup>(3)</sup>, for the words “the ferry service” there shall be substituted the words “the provision of passenger transport services across Portsmouth harbour”.

(7) Without prejudice to any other power available to it, the undertaker may operate or secure the operation of ferry services across the harbour—

- (a) in connection with the construction of the tunnel, in so far as the construction or proposed construction of the tunnel adversely affects the availability of ferry services across the harbour; and
- (b) in connection with the operation of the tunnel, at any time when the tunnel is not available for the operation of transit services or is subject to limitations upon the operation of transit services.

(8) The undertaker may do anything which in its opinion is necessary or convenient for the purposes of the ferry services across the harbour and, without prejudice to the generality of the foregoing, may demand, take and recover or waive charges for the use of any such service.

(9) Notwithstanding anything in section 16 (appropriation of part of landing place) of the Portsea Harbour Company Act 1984 or any other enactment but subject to payment of any charges which are ordinarily applicable, the undertaker may use the Portsea landing-place and any other public landing stage or structure for the purposes of any ferry service provided under paragraph (7).

(10) Nothing in paragraph (7) above shall authorise the undertaker to provide a ferry service—

- (a) from the Portsea landing-place, or any other public landing stage or structure or any temporary replacement for any such facility, to the exclusion of any public scheduled ferry service across the harbour provided by any person at the time of the making of this Order or which, thereafter, has been let to a person under section 49 of the Hampshire Act 1983 (power to establish or assist a ferry service, etc.); or
- (b) unless and until any person providing such a service has ceased to provide a service which is reasonably sufficient or the undertaking of such person has been acquired by agreement by a local authority either under the Ferries (Acquisition by Local Authorities) Act 1919<sup>(4)</sup> or otherwise.

(11) In this article “the harbour company” and “the Portsea landing-place” mean the harbour company and the landing-place as respectively defined in the Portsea Harbour Company Act 1984.

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<sup>(3)</sup> 1983 c. v.

<sup>(4)</sup> 1919 c. 75.

### **No apparatus in tunnel without consent**

**25.** Notwithstanding anything contained in any other enactment, no person shall enter upon, break up or interfere with the tunnel or any part thereof for the purpose of placing or doing anything in or in relation to any sewer, drain, main, pipe, wire or other apparatus or executing any work except with the written consent of the undertaker and in accordance with such terms and conditions as the undertaker may determine.

### **Protection of navigation**

**26.** Schedule 7 shall have effect.