
STATUTORY INSTRUMENTS

1987 No. 420

The Padstow Harbour Revision Order 1987

PART III

MANAGEMENT OF THE UNDERTAKING

Limits of jurisdiction

11.—(1) The limits within which the Commissioners shall have and may exercise the powers of a harbour authority, and within which the powers of the harbour master may be exercised shall be the limits of the Port.

(2) Nothing in this article shall empower the Commissioners to subject any person to liability to charges in respect of any vessel which remains seaward of a line drawn from Pentire Point to Stepper Point.

General powers of Commissioners

12. The Commissioners may, subject to the provisions of this Order, take all such steps from time to time as they consider necessary or desirable for the maintenance, operation and improvement of the Port and the accommodation and facilities (including navigational facilities) afforded therein or in connection therewith, and for those purposes, and without prejudice to the generality of the foregoing, the Commissioners may—

- (a) improve, regulate and manage the Port and provide harbour facilities therein; and
- (b) do all other things which in their opinion are expedient to facilitate the efficient functioning, improvement or development of the Port.

Appointment of officers

13. The Commissioners shall appoint a clerk and a harbour master and may appoint such other officers and such servants as they may determine.

Harbour master's powers

14.—(1) Section 52 of the Act of 1847 as incorporated with this Order, in its application to the harbour master—

- (a) shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the Port.
- (b) shall not be construed so as to require the harbour master 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 the section for all or any of the purposes thereof the harbour master shall be entitled in emergency to give general directions applicable to all vessels or to particular classes of vessels.

(2) Section 53 of the Act of 1847, in its application to the Commissioners and to the harbour master, shall not be construed so as to require the harbour master 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.

Liability for safety of goods

15. The Commissioners shall not be responsible for the safety of any goods deposited in any part of the harbour estate not specifically set apart by the Commissioners for the purpose of warehousing.

Power to remove goods

16.—(1) If any goods are left on or in any part of the harbour estate the Commissioners may require the owner of the goods to remove them, and if the goods are not removed within six hours after such requirement the Commissioners 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.

(2) Notwithstanding such removal on behalf of the Commissioners the goods shall be liable to a general lien for the cost of the removal, and for any charges payable by the owner.

(3) The powers of the Commissioners 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.

General byelaws

17. Subject to the provisions of this Order the Commissioners may make byelaws for all or any of the following purposes—

- (a) for regulating the use, operation and superintendence of the Port;
- (b) for regulating the admission to, movement and berthing within, and the departure of vessels from, the Port, or the removal of vessels, and for the good order and government of vessels whilst within the Port;
- (c) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the limits of the Port, and at the harbour estate;
- (d) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the Port or on the harbour estate;
- (e) for regulating the conduct of persons in the Port;
- (f) for regulating the placing, maintenance and use of moorings within the Port;
- (g) for preventing or removing obstructions or impediments within the Port or in or near the seaward approaches to the Port;
- (h) for regulating the removal and disposal of ballast brought by vessels entering the Port and the supply of ballast to vessels within the Port, so as to prevent any unnecessary obstruction by ballast;
- (i) for regulating the use of ferries within the Port;
- (j) for regulating the use of yachts, sailing boats, rowing boats and other small craft (whether or not propelled by mechanical power) and the holding of regattas and other public events so far as within the Port;
- (k) for regulating the launching of vessels within the Port;
- (l) for regulating or preventing the use of fires and lights within the Port and the harbour estate, and on or within any vessel in the Port;

- (m) for regulating the movement, speed and parking of vehicles within the harbour estate;
- (n) for regulating the exercise of the powers vested in the harbour master.

Byelaws as to lights, signals, etc.

18.—(1) Subject to the provisions of this Order the Commissioners may make byelaws for all or any of the following purposes—

- (a) for prescribing the lights and signals to be carried, exhibited or made by vessels while being used, navigated or moored within the Port;
 - (b) for prescribing the lights and signals to be exhibited or made by vessels aground within the Port;
 - (c) for prescribing the lights and signals to be exhibited or made by wreckmarking vessels or by other devices used for marking obstructions within the Port;
 - (d) for prescribing steering and sailing rules for the regulation of vessels used or navigated within, or entering or leaving, the Port;
 - (e) for prescribing the lights and signals to be exhibited or made at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the Port.
- (2) In this article “signals” include sound signals.
- (3) Different byelaws may be made under this article in relation to different classes of vessel.

Confirmation of byelaws and fines thereunder

- (a) **19.** (1) (a) All byelaws made by the Commissioners under this Order shall be subject to the provisions contained in subsections (3) to (8) of section 236 and in section 238 of the Local Government Act 1972⁽¹⁾ and those sections shall for the purposes of this article be construed as if the Commissioners were a local authority within the meaning of the said Act of 1972 and the reference to “the proper officer of the authority” included a reference to the clerk to the Commissioners.
- (b) In its application to byelaws made by the Commissioners subsection (7) of the said section 236 shall be construed as if it had been amended by the insertion of the words “or confirm with modifications” after the word “confirm” in the second place where that word occurs:

Provided that where the confirming authority proposes to make a modification which appears to him to be substantial, he shall inform the Commissioners and require them to take any steps he thinks necessary for informing persons likely to be concerned with that modification and shall not confirm the byelaws until there has elapsed such period as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Commissioners and by other persons who have been informed of it.

(2) The conforming authority for the purposes of this article and of the said section 236 in its application to the Commissioners shall be the Secretary of State.

(3) Byelaws made by the Commissioners under this Order may contain provisions for the imposing on persons convicted of an offence against any of the byelaws of a fine not exceeding £400 for any such offence.

(1) 1972 c. 70.

Saving for existing byelaws

20. All byelaws made by the Commissioners under any enactment repealed by this Order and in force immediately before the commencement of this Order shall have effect as if they had been made and confirmed under this Order and may be amended or revoked by the Commissioners accordingly.

Powers with respect to disposal of wrecks

21.—(1) In their application to the Commissioners sections 530 and 532 of the Merchant Shipping Act 1894(2) (which confer powers on the Commissioners with respect to, and with respect to anything in or on, any vessel sunk, stranded or abandoned in such manner as to be or to be likely to become an obstruction or danger to navigation in the Port or in or near any approach thereto) shall have effect—

- (a) subject to the provisions of the next following article; and
- (b) in relation to a vessel sunk, stranded or abandoned before, as well as after, the commencement of this Order.

(2) Subject to paragraph (3) of this article, and to any enactment for the time being in force limiting his liability, the Commissioners may recover as a simple contract debt from the owner of any vessel in relation to which they have exercised their powers under the said section 530 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.

(3) Except in a case which is in the opinion of the Commissioners a case of emergency, paragraph (2) of this article 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 Commissioners have given to the owner of the vessel not less than forty-eight hours' notice of their intention to do so; and if before the notice expires they receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, and no direction is served in respect of the vessel under paragraph (2)(b) of the next following article, he shall be at liberty to do so, and the Commissioners shall not exercise the powers aforesaid 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 Commissioners.

(4) Notice under the last foregoing paragraph to the owner of any vessel may be served by the Commissioners 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 Commissioners, by displaying the notice at the office of Commissioners for the period of its duration.

(4A) Except in a case which is, in the opinion of the Commissioners, a case of emergency, the Commissioners shall, before raising, removing or destroying under the powers conferred upon them by the said section 530 any vessel sunk, stranded or abandoned in the Port and within a distance of 150 metres of any apparatus belonging to or maintained by the British Gas Corporation, give to that corporation in writing as long notice as is practicable of their intention to do so.

(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 and the next following article the word “vessel” includes any aircraft.

Protection of Crown interests in wrecks

22.—(1) Without prejudice to section 741 of the Merchant Shipping Act 1894 (which relates to the exemption from the provisions of that Act of vessels belonging to Her Majesty), as modified by any Order in Council made under section 80 of the Merchant Shipping Act 1906(3) the powers conferred on the Commissioners by sections 530 and 532 of the said Act of 1894 shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) except with the consent of the Secretary of State for Defence which may be given with or without such a direction as is referred to in paragraph (2)(b) of this article, in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned—
 - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
 - (ii) was appropriated to the service, under the direction and control of the Secretary of State for Defence of Her Majesty's ships of war.

(2) The Commissioners shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for Transport of any decision of the Commissioners to exercise in relation to any vessel any of the powers conferred by the said sections 530 and 532 other than the power of lighting and buoys and, except in a case which is in the opinion of the Commissioners a case of emergency, shall not proceed with the exercise thereof—

- (a) except with the consent of the Secretary of State for Defence and the Secretary of State for Transport before the expiration of a period of fourteen days from the giving of the notice; or
- (b) if before the expiration of the said period there is served on the Commissioners a direction by the Secretary of State for Defence or the Secretary of State for Transport that those powers shall not be exercised in relation to that vessel except in such a case as aforesaid;

and where in any such case as aforesaid the Commissioners proceed to exercise those powers without the consent and before the expiration of the period mentioned in sub-paragraph (a) of this paragraph or after a direction has been served on them as aforesaid, they shall not in the exercise of those powers use any explosives and, if before the expiration of the period aforesaid such a direction as aforesaid is served on them, shall not be entitled to exercise the power of sale conferred by the said section 530 or the power conferred by paragraph (1)(a) of the last foregoing article:

Provided that—

- (i) the Commissioners shall not be required to give notice under this paragraph in respect of any vessel in respect of which they have received a consent under paragraph (1)(b) of this article, but any direction such as is referred to in sub-paragraph (b) of this paragraph accompanying that consent shall be deemed for the purposes of this paragraph and of paragraph (3) of the last foregoing article to have been duly served under sub-paragraph (b) of this paragraph;
- (ii) the prohibition on the use of explosives imposed by this paragraph shall not apply to the use for cutting away the superstructure of a vessel of such small explosive charges as may for the time being be approved by the Secretary of State for Transport for the purpose of this proviso.

(3) Without prejudice to the powers of sale conferred on the Commissioners by the said section 530, the Commissioners shall hold and dispose of any wreck within the meaning of Part IX

of the said Act of 1894 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance with such directions, if any, as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Commissioners shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Commissioners under that section.

(4) Any limitation on the powers of the Commissioners in relation to any vessel arising by virtue of paragraph (1) or paragraph (2) of this article shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Trinity House by section 531 of the said Act of 1894.

Powers to grant management leases

23. Notwithstanding anything in this or any other statutory provision of local application, the Commissioners for the purposes of or in connection with the management of the undertaking may lease or grant the use or occupation of or any easement, servitude or other right or interest in or over any lands, work, buildings, machinery, equipment or other property of the Commissioners for such period or periods, at such rents and considerations and on such terms and conditions as shall be agreed between the Commissioners and the person taking the same.

Works in the Harbour

24.—(1) The Commissioners, subject to obtaining the necessary rights in or over land, may execute, place, maintain and operate in and over the Port such works and equipment as are required for or in connection with the exercise by them of any of their functions under this Order and may alter, renew or extend any works so constructed or placed.

(2) In the exercise of the powers of this article the Commissioners shall not interfere with, damage or injuriously affect any apparatus belonging to or maintained by the Central Electricity Generating Board or the South Western Electricity Board and the said powers shall be so exercised as not to obstruct or render unreasonably inconvenient the access to any such apparatus or to operational land (as defined in section 222 of the Town and Country Planning Act 1971)⁽⁴⁾ of either of the said Boards.

(2A) In the exercise of the powers of this article the Commissioners shall not interfere with, damage or injuriously affect any apparatus belonging to or maintained by the British Gas Corporation.

(3) In this article “works” means works of any description, and includes the reclamation of land reasonably required for the purpose of executing works.

Power to dredge

25.—(1) The Authority may deepen, widen, dredge, scour and improve the bed and foreshore of the Port and of the approaches to the Port and may blast any rock within the Port or in such approaches.

(2) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course of such operations shall be the property of the Commissioners and may be used, sold, removed, deposited or otherwise disposed of as the Commissioners may think fit:

Provided that the Commissioners shall not lay down or deposit any materials in a place 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.

(4) 1971 c. 78.

(3) In the exercise of the powers of this article the Commissioners shall not interfere with, damage or injuriously affect any apparatus belonging to or maintained by the British Gas Corporation, and before operations for blasting any rock are carried out within 150 metres of any such apparatus the Commissioners shall give in writing to the British Gas Corporation not less than 28 days' notice of their intention to do so.

Moorings, etc.

26.—(1) No person other than the Commissioners may place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus within the Port unless he is licensed to do so by a licence granted under this article and except in accordance with the terms and conditions upon which such licence is granted:

Provided that this paragraph shall not apply to any mooring, buoy or similar apparatus placed or laid down before the commencement of this order except as provided in paragraph (5) of this article.

(2) The Commissioners may from time to time grant a licence to any person to place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus for vessels in the Port:

Provided that—

- (i) such a licence shall not entitle a person to place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus on land in respect of which he does not hold such rights as are necessary to enable him to enjoy the benefit of the licence;
- (ii) the Commissioners shall not unreasonably refuse to grant a licence to an owner or lessee of land (where the Commissioners are not the landlord) to place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus on that land and any question whether in such a case the grant of a licence has been unreasonably refused shall be determined by the Secretary of State.

(3) Any licence granted under this article shall be valid only for such a period not exceeding three years as may be specified in the licence.

(4) The Commissioners may charge a reasonable fee for granting a licence under this article.

(5) In the case of any mooring, buoy or similar apparatus which before the commencement of this order has been placed or laid down within the Port without the written permission of the Commissioners, the Commissioners may, by notice to the person using such mooring, buoy or similar apparatus, require the same to be removed unless, on an application under this article, the Commissioners grant a licence authorising the maintenance of the mooring, buoy or similar apparatus in question.

(6) Any person who without reasonable excuse—

- (a) contravenes paragraph (1) of this article; or
- (b) fails to comply with a notice under paragraph (5) of this article within the time stated in that notice or, as appropriate, within the time stated in a notice informing him of the refusal of his application for a licence,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.

(7) The Commissioners may remove any mooring, buoy or similar apparatus which has been placed, laid down, altered, renewed or extended, or which is being maintained, in contravention of this article and may recover the expenses of so doing from the person responsible for such contravention.

(8) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works authorised by a licence under this article, to the person authorised to execute those works.

Disposal of property no longer required for the Port

27. The Commissioners, in respect of property vested in them and held for the purposes of the Port which is no longer required for those purposes, may dispose of such property in such manner, whether by way of sale, exchange, lease, the creation of any easement, right or privilege, or otherwise, for such period, upon such conditions and for such consideration as they think fit.

Tidal works not to be executed without approval of Secretary of State.

28.—(1) A tidal work shall not be constructed, extended, enlarged, altered, replaced or relaid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, extended, enlarged, altered, replaced or relaid in contravention of this article or of any condition or restriction imposed under it—

- (a) the Secretary of State may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part thereof and restore the site to its former condition; and if, at the end of 30 days from the date when the notice is served upon the Commissioners they have failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work, or part of it, and restore the site to its former condition;

and any expenditure so incurred by the Secretary of State shall be recoverable from the Commissioners.

Lights on tidal works during construction

29.—(1) The Commissioners shall at or near a tidal work during the whole time of the construction, extension, enlargement, alteration, replacement or relaying thereof, 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 Secretary of State shall from time to time direct.

(2) If the Commissioners fail to comply with any requirement of a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

30.—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Commissioners shall forthwith notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to notify Trinity House as required by this article or to comply with any requirement of a direction under it the Commissioners shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

31.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners 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 he thinks fit.

(2) Where—

- (a) a work consisting partly of a tidal work and partly of works on and over land above the level of high water is abandoned or suffered to fall into decay; and
- (b) that part of the work on or over land above the level of high water is in such a 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 this article.

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Commissioners they have failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Commissioners.

Survey of tidal works

32. If he deems it expedient, the Secretary of State may at any time order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by him in any such survey and examination shall be recoverable from the Commissioners.

Permanent lights on tidal works

33.—(1) After the completion of a tidal work the Commissioners shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under this section they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.