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STATUTORY INSTRUMENTS

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**1994 No. 1440**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Wells Harbour Revision Order 1994**

*Made* - - - - - *23rd May 1994*

*Coming into force* - - - - - *28th May 1994*

Whereas an application for an Order under section 14 of the Harbours Act 1964<sup>(1)</sup> was made to the Minister of Agriculture, Fisheries and Food by the Wells Harbour Commissioners, being the harbour authority engaged in improving, maintaining and managing the harbour of Wells;

And whereas the said Commissioners caused a draft of the Order, as applied for to the said Minister to be published, and gave notice of the application, in accordance with paragraph 3 of Schedule 3 to the said Act;

And whereas objections duly made to the application have been withdrawn;

And whereas the said Minister is satisfied in accordance with section 14(2)(b) of the said Act that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the said harbour in an efficient and economical manner;

Now therefore the said Minister in exercise of the powers conferred on her by the said section 14 and of all other powers enabling her in that behalf, and on the application of the said Wells Harbour Commissioners, hereby makes the following Order:—

**PART I**

**PRELIMINARY**

**Title and commencement**

1.—(1) This Order may be cited as the Wells Harbour Revision Order 1994 and shall come into force on 28th May 1994.

(2) The Act of 1835, the Act of 1844 and this Order may be cited together as the Wells Harbour Acts and Order 1835 to 1994.

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(1) 1964 c. 40; section 14 was amended by sections 36(2) and (4) and 43(3) of the Docks and Harbours Act 1966 (c. 28), paragraphs 2, 3, 4 and 14 of Schedule 6 to the Transport Act 1981 (c. 56), section 46 of the Criminal Justice Act 1982 (c. 48) and paragraph 1 of Schedule 3 to the Transport and Works Act 1992 (c. 42).

## Interpretation

2. In this Order, unless the context otherwise requires: —

“the Act of 1835” means the Act passed on 3rd July 1835 intituled an Act for more effectually repairing, improving, and preserving the Harbour and Quay of Wells in the County of Norfolk<sup>(2)</sup>;

“the Act of 1844” means the Act passed on 29th July 1844 intituled an Act for improving the Harbour and Quay of Wells in the County of Norfolk; and for extending and altering some of the Provisions of the Act relating to the said Harbour and Quay<sup>(3)</sup>;

“the Act of 1847” means the Harbours, Docks, and Piers Clauses Act 1847<sup>(4)</sup>;

“charges” means the charges, rates, tolls or dues which the Commissioners are for the time being authorised to demand, take and recover in relation to the undertaking;

“the Commissioners” means the Commissioners for the time being holding office in accordance with the Act of 1835;

“enactment” means any Act and any order or other instrument made under an Act including this Order;

“the fishery” means the area to which the Wells Harbour Shell Fishery Order 1972<sup>(5)</sup> relates which is described in article 5 of that Order;

“the harbour” means the area below the level of high water or, in the case of any creek or inlet, so far as the tide flows, which is bounded on the east by the line of longitude 00.55 minutes East, on the west by the line of longitude 00.50 minutes East and on the north by the parallel of latitude 53O.00 minutes North and, in relation to the Commissioners' jurisdiction for pilotage purposes, includes also (so far as it is not within the area described above) the area within the limits of jurisdiction described in the Wells (Pilotage) Harbour Revision Order 1988<sup>(6)</sup>

“the harbour estate” means the docks, piers, wharves, quays, berths, roads, bridges, sheds and other works and conveniences and the lands, buildings and property, of every description and of whatever nature, which are for the time being vested in or occupied by the Commissioners for the purposes of the harbour;

“the harbour master” means the harbour master appointed by the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act as harbour master;

“hovercraft” has the same meaning as in the Hovercraft Act 1968<sup>(7)</sup>;

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

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“owner” when used with reference to any vessel includes the owner, master, charterer or other person in charge of the vessel, and when used with reference to goods includes the owner, consignor, shipper, consignee or other person in charge of the goods and in either case includes their respective agents in relation thereto;

“the Secretary of State” means the Secretary of State for Transport;

“shellfish” means oysters, mussels, cockles and clams;

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(2) 1835 c. xlviiii.  
(3) 1844 c. xciii.  
(4) 1847 c. 27.  
(5) S. I. 1972/315.  
(6) S. I. 1988/2158.  
(7) 1968 c. 59.

“the telecommunications code” means the code contained in Schedule 2 to the Telecommunications Act 1984<sup>(8)</sup>;

“tidal work” means so much of any work for the time being vested in the Commissioners as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the harbour undertaking of the Commissioners for the time being;

“vessel” means every description of vessel, however propelled or moved, and includes non-displacement craft and any thing constructed or used to carry or propel persons or goods by or across water and a seaplane on or in the water, a hovercraft and a hydrofoil vessel.

### **Incorporation of enactments**

3. The provisions of the Act of 1847 (except sections 8 to 20, 25, 42, 50, 83 to 90, 95, 97 and 98), so far as applicable to the purposes of, and not inconsistent with the provisions of this Order, are hereby incorporated with this Order subject to the following modifications, that is to say:—

- (a) the expression “the special Act” shall mean this Order, the expression “the undertakers” shall mean the Commissioners and the expression “the harbour, dock or pier” shall mean the harbour and any docks, piers, berths, quays or wharves forming part of the harbour estate;
- (b) section 23 shall have effect as if the proviso to that section were omitted;
- (c) sections 52 and 53 shall have effect in accordance with the provisions of article 6 (harbour master’s powers) of this Order; and
- (d) section 73 shall have effect as if there were added at the end thereof the words “or from making any deposit or other disposal which is in accordance with the provisions of the Food and Environment Protection Act 1985<sup>(9)</sup> authorised by the Wells Harbour Revision Order 1994”.

## **PART II**

### **MANAGEMENT OF THE UNDERTAKING**

#### **Limits of jurisdiction**

4. Without prejudice to any statutory provision which authorises the Commissioners to exercise powers outside the limits of the harbour, 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 harbour and the harbour estate.

#### **General powers of Commissioners**

5. 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 improvement, maintenance and management of the harbour and the harbour estate 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 —

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<sup>(8)</sup> 1984 c. 12.

<sup>(9)</sup> 1985 c. 48.

- (a) improve, maintain, regulate, manage, mark and light the harbour and the harbour estate and provide harbour facilities therein; and
- (b) do all other things which in their opinion are expedient to facilitate the proper carrying on or development of their undertaking.

### **Harbour master's powers**

6.—(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 any vessel in any particular part or parts of the harbour;
- (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 an emergency to give general directions applicable to all vessels or to particular classes of vessels.

(2) Section 53 of the Act of 1847, as incorporated with this Order, shall not be construed so as to require the harbour master to serve a notice in writing of his directions 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**

7. The Commissioners shall not be responsible for the safekeeping 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**

8.—(1) If any goods are left on or in any part of the harbour estate (not being premises which the Commissioners have leased, or granted the use or occupation of, to any person under article 14 (Powers to grant management leases) of this Order for the storage of goods) 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 by or on behalf of the Commissioners the goods shall be liable to a general lien in favour of the Commissioners 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**

9.—(1) 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 management of the harbour and the harbour estate;
- (b) for regulating the admission of vessels to, and movement and berthing within the harbour, the removal of vessels from the harbour and the good order and government of vessels whilst within the harbour;

- (c) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the limits of the harbour and at the harbour estate;
  - (d) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour or on the harbour estate;
  - (e) for regulating the conduct of persons in the harbour and the harbour estate;
  - (f) for preventing or removing obstructions or impediments within the harbour or in or near the seaward approaches to the harbour;
  - (g) for regulating the removal and disposal of ballast brought by vessels entering the harbour and the supply of ballast to vessels within the harbour, so as to prevent any unnecessary obstruction by ballast;
  - (h) 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 harbour;
  - (i) for regulating the launching of vessels within the harbour;
  - (j) for regulating or preventing the use of fires or lights within the harbour and the harbour estate, and on or within any vessel in the harbour;
  - (k) for regulating the movement, speed and parking of vehicles within the harbour estate;
  - (l) for regulating the exercise of the powers vested in the harbour master.
- (2) Different byelaws may be made under this article in relation to different classes of vessel.

#### **Byelaws as to lights, signals, etc.**

**10.**—(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 harbour;
  - (b) for prescribing the lights and signals to be exhibited or made by vessels aground within the harbour and the harbour estate;
  - (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 harbour;
  - (d) for prescribing steering and sailing rules for the regulation of vessels used or navigated within, or entering or leaving, the harbour;
  - (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 harbour.
- (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) **11.** (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<sup>(10)</sup> 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.

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<sup>(10)</sup> 1972 c. 70; section 236 was amended by the Civil Aviation Act 1982 (c. 16) section 109 and Schedule 15, paragraph 11; section 238 was amended by the Local Government Act 1985 (c. 51) section 84 and Schedule 14, Part 1, paragraph 31(2).

- (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 if the Commissioners consent, 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, or the effect of which, appears to him to be substantial, he shall inform the Commissioners and require them to take any step 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 confirming authority for the purposes of this article and of the said section 236 in its application to the Commissioners shall be the Minister.

(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 level 4 on the standard scale.

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

**12.**—(1) In their application to the Commissioners sections 530 and 532 of the Merchant Shipping Act 1894<sup>(11)</sup> (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 harbour or in or near any approach thereto) shall have effect —

- (a) subject to the provisions of article 13 (Protection of Crown interest in wrecks) of this Order; 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) below, 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) 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 buoys, the Commissioners have given to the owner of the vessel not less than 48 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

- (b) (2) (b) of article 13, 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 7 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 paragraph (3) above 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

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(11) 1894 c. 60.

or any such place of business or abode is not known to the Commissioners, by displaying the notice at the office of the Commissioners 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 and the next following article the word “vessel” includes any aircraft.

### **Protection of Crown interest in wrecks**

**13.**—(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<sup>(12)</sup>, 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
- (b) (2) (b) below, 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 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 before the expiration of a period of 14 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 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

- (a) (1) (a) of article 12 (Powers with respect to disposal of wrecks) of this Order:  
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
  - (b) (1) (b) above, 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

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(12) 1906 c. 48.

and paragraph (3) of the said article 12 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 the purposes 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) above 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**

14. Notwithstanding anything in this Order 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**

15. The Commissioners may from time to time maintain, renew or alter all works now vested in them, or hereafter to be acquired or executed by them, in the harbour.

#### **Power to dredge**

16.—(1) Subject to the provisions of this Order and for the purposes of improving and maintaining the harbour the Commissioners may deepen, widen, dredge, scour and improve the bed and foreshore of the harbour and of the approaches to the harbour and may blast any rock within the harbour or in such approaches.

(2) Any materials (other than a wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course of the operations referred to in paragraph (1) above shall be the property of the Commissioners and may be used, sold, removed, deposited or otherwise disposed of as the Commissioners may think fit.

(3) The powers of the Commissioners under this article shall be exercisable subject to the provisions of article 38 (Crown Rights) of this Order and in particular and without prejudice to that general limitation, any consent given to the exercise of such powers by the Crown Estate Commissioners on behalf of Her Majesty may be given subject to such restrictions and conditions, including the payment by the Commissioners to the Crown Estate Commissioners of royalties, rents or sums of money in respect of materials raised from any place below the level of high water and sold by the Commissioners under this article or in respect of any place below the level of high water upon which materials may be deposited as may be fixed by the Crown Estate Commissioners.

### **Saving for fishery**

17.—(1) The Commissioners shall not exercise the power to dredge conferred on them by article 16 (Power to dredge) of this Order within the fishery unless in their opinion it is essential to do so to secure the safety of navigation within the harbour and before exercising the said power within the fishery they shall consult the lessee of any part of the fishery which has been leased by the Commissioners under article 6 of the Wells Harbour Shell Fishery Order 1972 which is affected by the proposed dredging and shall carry out any dredging within the fishery in such manner as to do as little damage as possible to shellfish.

(2) If the exercise by the Commissioners of their said power to dredge within the fishery causes damage to, or removes, any shellfish within part of the fishery which has been leased by the Commissioners as aforesaid the Commissioners shall pay the lessee such amount of compensation as may be agreed between the Commissioners and the lessee.

### **Moorings etc.**

18.—(1) No person other than the Commissioners may place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus within the harbour 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 coming into force of this Order except as provided in paragraph (5) below.

(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 harbour:

Provided that —

- (a) 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;
- (b) the Commissioners shall not unreasonably refuse to grant a licence to an owner or lessee of land to place, lay down, alter, renew or extend, or maintain, moorings, buoys or similar apparatus exclusively for his personal use 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 Minister.

(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 make a reasonable charge for granting a licence under this article.

(5) In the case of any mooring, buoy or similar apparatus which before the coming into force of this Order has been placed or laid down within the harbour 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) above; or
- (b) fails to comply with a notice under paragraph (5) above 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 level 3 on the standard scale.

(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, in relation to works authorised by a licence under this article, be incorporated with this Order and, as so incorporated, shall have effect as if the person authorised to execute the works in question was a relevant undertaker, and the works in question were undertaker's works, within the meaning of the said paragraph 23.

#### **Consent to works by other person within harbour**

**19.**—(1) No person other than the Commissioners shall construct, alter or extend any works (other than moorings, buoys or similar apparatus) within the harbour without the previous consent in writing of the Commissioners (which consent shall not be unreasonably withheld) and where any person has constructed, altered or extended any such works without such consent, or has failed to comply with any condition subject to which any such consent has been given, the Commissioners may serve a notice on that person requiring him within such period as may be specified in the notice to remove the works or make such alteration therein as may be so specified and if that person fails to comply with the requirements of the notice within the period specified therein the Commissioners may themselves remove or alter the works and in that event they shall be entitled to recover the expense thereof from the person by whom the works were constructed, altered or extended.

(2) Any question whether such consent has been unreasonably withheld shall be determined by the Minister.

#### **Disposal of land no longer required for harbour purposes**

**20.** The Commissioners, in respect of land vested in them and held for the purposes of the harbour which is no longer required for those purposes, may —

- (a) dispose of such land or interests in it in such manner, for such period, upon such conditions and for such consideration, as they think fit; and
- (b) develop such land (alone or with others) with a view to disposing of that land as aforesaid and may acquire other land by agreement for the purpose of developing it together with the first-mentioned land.

#### **Tidal works not to be executed without approval of Secretary of State**

**21.**—(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**

**22.**—(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 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**

**23.**—(1) In the case of injury to or destruction or decay of a tidal work or any part thereof the Commissioners shall as soon as reasonably practicable 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**

**24.**—(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**

**25.** 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**

26.—(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 and take such other steps 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 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.

### **Defence of due diligence**

27.—(1) In any proceedings for an offence under articles 22, 23 and 26 of this Order (as the case may be), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence made under paragraph (1) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without the leave of the court, be entitled to rely on that defence unless within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in the possession of the person charged.

## **PART III CHARGES**

### **Charges for harbour facilities**

28.—(1) The Commissioners may demand, take and recover in respect of anything done or provided by them or on their behalf in relation to the harbour or the harbour estate such reasonable charges as they may determine.

(2) In paragraph (1) above “charges” does not include ship, passenger or goods dues.

### **Conditions relating to payment of charges**

29. Charges shall be payable subject to such conditions as the Commissioners may from time to time specify in their published list of charges.

### **Payment of charges**

30.—(1) The several charges which the Commissioners are for the time being authorised to demand, take and recover in respect of vessels and goods shall be due and payable before the removal from the harbour or the harbour estate of any vessel or goods in respect of which they are payable and may be demanded, taken and recovered by such persons and at such places and times as the Commissioners may from time to time appoint.

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

(3) Where charges may be recovered by the Commissioners from more than one person, the persons from whom they may be recovered shall be jointly and severally liable.

### **Payment of charges on warehoused goods**

31. Notwithstanding the provisions of article 8 (Power to remove goods) of this Order, the owner or person having the charge of any goods warehoused, placed, stored or yarded in a warehouse, transit shed or area, store or yard of the Commissioners shall, before the removal of any of the goods therefrom and at such a date or dates as shall be fixed by the Commissioners, pay such charges as shall be then due and payable on the goods.

### **Recovery of charges**

32. In addition to any other remedy afforded by this Order and by the Act of 1847 as incorporated with this Order, and whether or not the demand required by section 44 (Recovery of tonnage rates by distraint of ship and tackle) of that Act has been made, the Commissioners may recover charges as a debt in any court of competent jurisdiction.

### **Exemption of lifeboat crew from charges**

33. All persons going to or returning from any lifeboat or using any apparatus for saving life and being persons either belonging to the crew of the lifeboat or to the coastguard or being persons for the time being actually employed in saving life or in exercising or using the lifeboat or the apparatus for saving life and all persons brought ashore from any vessel in distress shall at all times have free ingress, passage and egress to, along and from the harbour without payment.

### **Exemption of Officers**

34. Officers of the Department of Transport, of the Ministry of Agriculture, Fisheries and Food, and of the Health and Safety Executive and constables acting in the execution of their duty shall at all times have free ingress, passage and egress to, along and from the harbour without payment.

## **PART IV**

### **FINANCE**

#### **General borrowing powers**

35.—(1) The Commissioners may from time to time borrow upon the security of all or any of the revenues and property of the Commissioners and by any method or methods they see fit, such sums of money as they think necessary:

Provided that:

- (a) the amount outstanding in respect of monies so borrowed shall not at any time exceed £500,000;
- (b) in calculating for the purpose of this article the amount outstanding in respect of monies borrowed by the Commissioners there shall be excluded any sums borrowed for the purpose of repaying within 12 months of the date of borrowing any sum for the time being outstanding by way of principal on any amount previously borrowed.

(2) Monies borrowed by the Commissioners under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of paragraph (2) above, but without prejudice to the generality thereof, purposes to which capital money is properly applicable shall be deemed to include: —

- (a) the payment of any interest falling due within the 5 years immediately following the date of the borrowing of any sum of money borrowed by the Commissioners under this article; and
- (b) the repayment within twelve months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

### **Temporary borrowing**

**36.** The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums as the Commissioners may require for meeting their obligations or discharging their functions under or in pursuance of any statutory provision:

Provided that the total amount outstanding at any one time of the money so borrowed shall not exceed £50,000.

### **Audit of Accounts**

**37.—(1)** The accounts of the Commissioners shall be audited by a person to be appointed in respect of each financial year by the Commissioners and the auditor shall be provided by the Commissioners with copies of the statement of accounts.

(2) The provisions of Part II of the Companies Act 1989(**13**) (which deal with the eligibility of persons for appointment as company auditors) shall apply in relation to the Commissioners as if the Commissioners were a company within the meaning of those provisions and as if a person appointed as auditor of the Commissioners were, within their meaning, a company auditor.

(3) The report of the auditor on the accounts of the Commissioners for each financial year shall be submitted to a meeting of the Commissioners as soon as reasonably practicable following the year of account. PART V MISCELLANEOUS

### **Crown Rights**

**38.—(1)** Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the Commissioners to take, use, enter upon or in any manner interfere with, any land or hereditaments (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) or any rights of whatsoever description: —

- (a) belonging to Her Majesty in right of the 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 may be considered necessary or appropriate.

### **Saving for Trinity House**

**39.** None of the provisions of this Order shall prejudice or derogate from any of the powers, duties or privileges of Trinity House.

### **For protection of National Rivers Authority**

**40.** For the protection of the National Rivers Authority (in this article referred to as “the Authority”) the following provisions shall, unless otherwise agreed in writing between the Commissioners and the Authority, have effect: —

(1) In this article —

“accumulation” means any accumulation of silt or other material which affects the operation of any outfall;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and

“construct” and “constructed” have corresponding meanings;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for land drainage, defence against water (including sea water) or tidal monitoring;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature, including sea defences, under the jurisdiction of the Authority for the purposes of the Water Resources Act 1991(14) or any order, regulation, byelaw or other instrument made or having effect thereunder;

“the fishery” means fish in, or migrating to or from, any river and the spawn, habitat or food of such fish;

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken) as is situated in, on, under, over or within 16 metres of a drainage work or between a drainage work and low water mark or which is otherwise likely to: —

- (a) affect any drainage work including the operation of it or the volumetric flow rate of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse;
- (c) cause obstruction to the free passage of fish in any watercourse;
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” has the meaning given in section 221(1) of the Water Resources Act 1991.

- (a) (2) (a) Before beginning to construct any specified work, the Commissioners shall submit to the Authority plans of the work and such further particulars available to them as the Authority may reasonably require;
- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Authority or as settled in accordance with paragraph (15) below;
- (c) Any approval of the Authority required under this paragraph: —
  - (i) shall not be unreasonably withheld;
  - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;

(iii) may be given subject to such reasonable requirements as the Authority may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.

(3) Without prejudice to the generality of paragraph (2) above, the requirements which the Authority may impose under that paragraph include —

- (a) conditions as to the time at which and the manner in which any work is to be carried out;
- (b) conditions requiring the Commissioners at their own expense —
  - (i) to provide or maintain means of access for the Authority;
  - (ii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;
  - (iii) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur.

(4) Any specified work, and all protective works required by the Authority under paragraph (2) above, shall be constructed to the reasonable satisfaction of the Authority and the Authority shall be entitled by its officer to watch and inspect the construction of such works.

(5) The Commissioners shall give to the Authority notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

- (a) (6) (a) If, during the construction of a specified work or within 10 years after the completion of such work and wholly or partly in consequence of its construction there is caused or created an accumulation or erosion, the Commissioners, if so required by the Authority before or within the period of 10 years after such completion shall remedy such accumulation or erosion in the manner specified in sub-paragraph (c) below and, if they refuse or fail so to do, the Authority may itself cause the work to be done and may recover the reasonable cost thereof from the Commissioners;
- (b) should any accumulation or erosion in consequence of such construction arise within the said period of 10 years and be remedied in accordance with sub-paragraph (c) below, any recurrence of such accumulation or erosion shall from time to time be so remedied by the Commissioners during the said period of 10 years and at any time thereafter, save that the Commissioners' obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction;
- (c) for the purposes of sub-paragraphs (a) and (b) above —
  - (i) in the case of an accumulation, the remedy shall be its removal; and
  - (ii) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Authority;

Provided that in the event that surveys, inspections, tests or sampling establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work the Commissioners shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise as aforesaid.

(7) For the purposes of paragraphs (5) and

- (a) (6) (a) above the date of completion of a work shall be the date on which it is brought into use.
- (a) (8) (a) Any specified work which provides a defence against flooding shall be maintained by and at the expense of the Commissioners to the reasonable satisfaction of the Authority;
- (b) if any such work is no longer required by the Commissioners or is not maintained to the reasonable satisfaction of the Authority, the Authority may by notice in writing require the Commissioners at the Commissioners' own expense to repair and restore the work, or any part thereof, or to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Authority thinks proper;
- (c) if, on the expiration of 30 days from the date on which a notice is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Authority may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Commissioners.

(9) If by reason of the construction of any specified work or by reason of the failure of that work or of the Commissioners to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Commissioners to the reasonable satisfaction of the Authority and, if the Commissioners fail to do so, the Authority may make good the same and recover from the Commissioners the expense reasonably incurred by it in so doing.

(10) In the event of any works being constructed by the Authority in relation to a drainage work the Commissioners shall have no claim against the Authority in respect of any additional costs which may be incurred by the Commissioners as a result of such works.

(11) The Commissioners shall indemnify the Authority in respect of all costs, charges and expenses which the Authority may reasonably incur or have to pay or which it may sustain —

- (a) in the examination or approval of plans under this article;
- (b) in the inspection of the construction of the specified works or any protective works required by the Authority under this article.
- (a) (12) (a) Without prejudice to the other provisions of this article the Commissioners shall indemnify the Authority from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Authority by reason of the construction of any of the works or by reason of their maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Commissioners, their contractors, agents, workmen, or servants whilst engaged upon any such work;
- (b) the Authority shall give to the Commissioners reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Commissioners which agreement shall not be unreasonably withheld.

(13) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Commissioners from any liability under the provisions of this article.

(14) Except as otherwise provided by this article nothing in this Order shall prejudice or affect in their application to the Authority the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991(15), the Salmon and Freshwater Fisheries Act 1975(16), the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Authority.

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(15) 1991 c. 59.

- (a) (15) (a) Unless the parties agree to arbitration any difference arising between the Commissioners and the Authority under paragraph (2) above shall be settled by the Minister on a reference to her by the Commissioners or the Authority after notice by one to the other;
- (b) Subject to sub-paragraph (a) above, any difference arising between the Commissioners and the Authority under this article (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

**Repeals etc.**

**41.**—(1) The enactments set out in the first column of the Schedule to this Order are hereby repealed to the extent specified in the second column of that Schedule.

(2) Section XXII of the Act of 1835 shall have effect as if the words “during the continuance of this Act” in both places where they occur were omitted.

(3) References in the Act of 1835, however expressed, to the execution of that Act by the Commissioners shall be deemed to include references to the execution by the Commissioners of their powers and duties under any enactment and references in that Act, however expressed, to anything done or to be done under, or by virtue of, the Act of 1835 shall be deemed to include references to anything done or to be done under, or by virtue of any enactment.

**Copy of Order to be kept for inspection**

**42.** The Commissioners shall cause a copy of this Order to be kept at their harbour office where it shall be available for inspection during reasonable hours by appointment with the Commissioners.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on

L.S.  
Minister of Agriculture,  
Fisheries and Food.  
23rd May 1994.

*Gillian Shephard*

SCHEDULE

ARTICLE 41(1)

REPEALS

Enactments Repealed	Extent of repeal
The Act of 1835	The whole Act except sections VII to X, XII, XIV to XVI, XIX, XX and XXII.
The Act of 1844	The whole Act except sections LXXXIX, XC, XCI, XCVII, CI, CII, CXIII and CXIV.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order defines the limits of the harbour of Wells within the jurisdiction of the Wells Harbour Commissioners.

The Order also replaces most of the existing powers and duties of the Commissioners with up-to-date provisions.

The applicants for the Order are the Wells Harbour Commissioners.