
STATUTORY INSTRUMENTS

1994 No. 1440

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 —

- (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⁽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 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⁽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

(1) 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).

(2) 1894 c. 60.

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 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(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
- (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 —

(3) 1906 c. 48.

- (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 buoying 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 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.