
STATUTORY INSTRUMENTS

1994 No. 1440

The Wells Harbour Revision Order 1994

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⁽¹⁾ (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⁽²⁾ or any order, regulation, byelaw or other instrument made or having effect thereunder;

(1) 1989 c. 40.
(2) 1991 c. 57.

“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(3), the Salmon and Freshwater Fisheries Act 1975(4), the Water Resources Act 1991 or any other enactment, byelaw or regulation relating to the Authority.

(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

(3) 1991 c. 59.

(4) 1975 c. 51.

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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.