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STATUTORY INSTRUMENTS

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**1994 No. 1647**

**The Lancaster Port Commission Harbour Revision Order 1994**

**PART II**

**GENERAL POWERS**

**Remuneration of Commissioners**

3. The Commissioners may pay to a Commissioner such reasonable allowances in the nature of those payable under sections 173 to 175 of the Local Government Act 1972(1) as they may determine but, as regards each allowance, not exceeding the amount payable in respect of the corresponding allowance under those sections to a member of a parish or community council in respect of the performance of any approved duty outside the parish or community.

**Disposal of property**

4.—(1) Without prejudice to article 38 of the 1967 Order (disposal of land), but subject to paragraph (2) below, the Commissioners may so far as they consider desirable in the interests of efficient and economical management of the port dispose of any lands, works, buildings, machinery, equipment or other property in such manner, whether by way of lease, the creation of any easement, licence, right or privilege, or otherwise, for such period or periods, at such consideration or rent and on such terms and conditions as they think fit.

(2) Paragraph (1) above does not confer upon the Commissioners any power of sale.

(3) In article 38 of the 1967 Order

(a) in paragraph (1)—

(i) for the word “land” there shall be substituted the words “any lands, works, buildings, machinery, equipment or other property”; and

(ii) after the word “consideration” there shall be inserted the words “or rent”; and

(b) paragraph (2) shall be omitted.

**Temporary borrowing**

5. Article 27(1) of the 1967 Order (as substituted by article 4 of the Lancaster Port Commission Revision Order 1985) shall be amended by the insertion after the words “The Commissioners may” of the words “upon the security of all or any of the revenues and property of the Commissioners”.

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(1) 1972 c. 70; sections 173, 174 and 175 were amended by the Local Government Act 1972 (References to Aldermen) Order 1977 (S.I.1977/1710); the Local Government, Planning and Land Act 1980 (c. 65), sections 24, 25 and 194 and Schedule 34, Part XVI; the Water Act 1983 (c. 23), section 11(3) and Schedule 5, Part I; and the Miscellaneous Financial Provisions Act 1983 (c. 29).

## Byelaws

6.—(1) In addition to the byelaws which may be made by the Commissioners under section 83 of the Harbours, Docks, and Piers Clauses Act 1847(2) the Commissioners may from time to time make such byelaws as they think fit for all or any of the following purposes

- (a) for regulating the exercise of the powers vested in the harbour master;
- (b) for regulating the use of any works and facilities provided by the Commissioners;
- (c) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the port;
- (d) for regulating the conduct of all persons in the port, not being members of a police force or officers or servants of the Crown or of a fire authority whilst in the exercise of their duties as such;
- (e) for regulating the placing, maintenance and use of moorings;
- (f) for preventing and removing obstructions or impediments within the port;
- (g) for regulating the launching of vessels within the port;
- (h) for regulating or preventing the use in the port or on board any vessel therein of fires, naked lights, flares or any flammable matter, equipment, tools or appliances which the Commissioners consider involve a risk of fire;
- (i) for prohibiting persons smoking in the port;
- (j) for prohibiting and regulating the use, movement, speed and parking of vehicles within the port;
- (k) for requiring the use of effectual silencers and for the control of noise generally on vessels in the port;
- (l) for regulating vessels in the port and their entry into and departure from it and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the port;
- (m) for regulating the loading and unloading of cargoes within the port and the embarkation of persons into, or their disembarkation from, vessels within the port;
- (n) for prescribing the lights and signals to be exhibited or made
  - (i) by vessels aground within the port;
  - (ii) by vessels used for marking obstructions within the port; and
  - (iii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the port;
- (o) for preventing or regulating the discharge into the port of any material or substance;
- (p) for regulating fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf or other installation or structure of any kind within the port;
- (q) for regulating or preventing bathing, and for securing the protection of bathers, within the port;
- (r) for regulating the use and preventing the misuse of services and facilities provided by the Commissioners in the port; and
- (s) for imposing upon any person, on his being summarily convicted of contravening or failing to comply with any byelaw under this article, a fine not exceeding level 4 on the standard scale.

- (2) In this article “signals” includes sound signals.
- (3) Byelaws made by the Commissioners in relation to the port
  - (a) may make different provision in relation to different classes of vessels; and
  - (b) may otherwise make different provision for different circumstances.

(4) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972 (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Commissioners in relation to the port as if the Commissioners were a local authority and the Clerk to the Commissioners were a proper officer of a local authority; but, subject to paragraph (5) below, the Secretary of State may confirm the byelaws with such modifications as he thinks fit.

(5) Where the Secretary of State proposes to make a modification which appears to him to be substantial, he shall inform the Commissioners and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification and shall not confirm the byelaws until such period has elapsed 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.

(6) In consequence of the preceding provisions of this article, article 35 of the 1967 Order (byelaws as to signals and lights on vessels and confirmation of byelaws) shall cease to have effect: Provided that all byelaws made by the Commissioners under that article and in force at the commencement of this Order shall continue in force and shall be deemed to have been made under the provisions of this article.

### **Restriction of works and dredging**

- 7.—(1) Subject to paragraph (4) below, no person other than the Commissioners shall
- (a) construct, alter, renew, or extend any works; or
  - (b) dredge; on, under or over tidal waters or tidal land below the level of high water in the port unless he is licensed to do so, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 9 or, as the case may be, article 10 of this Order.

(2) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The Commissioners may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates, and to restore the site thereof to its former condition; and if that person fails to comply with the notice, the Commissioners may carry out the work so required and recover from him the cost of so doing.

- (4) Nothing in this article shall apply to
- (a) any operations or works specifically authorised by any enactment;
  - (b) any operations or works of a statutory undertaker; or
  - (c) the maintenance of the existing 18 inch and 12 inch water mains laid across the bed of the River Lune and belonging to Imperial Chemical Industries plc or their successors in title.

### **Control of certain operations and works of statutory undertakers**

8.—(1) This article applies to any operations or works in the port of a statutory undertaker on, under or over tidal waters or tidal land below the level of high water in the port, not being operations or works which are specifically authorised by any enactment.

(2) Subject to paragraph (3) below, a statutory undertaker shall not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Commissioners and has supplied the Commissioners with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph 6(2) above, the statutory undertaker shall inform the Commissioners of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies shall be carried out subject to any directions which may from time to time be given by the Commissioners to the statutory undertaker, being directions such as in the opinion of the Commissioners are necessary for the avoidance of danger and the prevention, so far as reasonably possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Licensing of works**

9.—(1) The Commissioners may, upon such terms and conditions as they think fit, grant to any person, subject to article 23 of this Order, a licence to construct, alter, renew or extend works in the port under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, altered, renewed or extended.

(2) Application for a works licence shall be made in writing to the Commissioners and shall

- (a) be accompanied by such plans, sections and particulars of the works to which the application relates as the Commissioners may reasonably require; and
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable him to enjoy the benefits of the licence and, if not, the action taken to enable him to obtain such rights if the licence is granted; and, in granting a licence, the Commissioners may require modifications in the plans, sections and particulars so submitted.

(3) The Commissioners may require an applicant for a works licence, on making his application, to pay a reasonable charge in respect of the administrative expenses of dealing with the application; and different charges may be required to be paid in relation to different cases or classes of case.

- (a) (4) (a) On receipt of an application for a works licence the Commissioners shall serve on the National Rivers Authority a copy of the application and all plans, sections and particulars incidental thereto.
- (b) The Commissioners shall consider such observations as the National Rivers Authority may submit to the Commissioners within six weeks after service on the National Rivers Authority of the application and particulars as aforesaid, and shall not grant a works licence before the expiry of that period.
- (c) In granting any works licence in response to such an application the Commissioners shall impose on the applicant such terms and conditions as give effect to such reasonable requirements to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for land drainage purposes is not impaired, as the National Rivers Authority may, within the said period, make in any observations to the Commissioners.

- (d) The provisions of sub-paragraph (c) above are subject to the Commissioners' duty under article 11(5) of this Order to give effect to any decision or requirement given or made by the Secretary of State under article 11(4) of this Order.
- (5) Where the Commissioners refuse to grant a works licence which has been applied for they shall give reasons in writing for the refusal.
- (6) Where the Commissioners grant a works licence upon terms or conditions or require any modifications in the plans and particulars, they shall give reasons in writing for the terms and conditions imposed or the modifications required.
- (7) If within three months from the receipt of the application under paragraph (2) above the Commissioners do not grant a works licence, they shall be deemed to have refused the application.
- (8) Articles 18 to 23 of the 1967 Order (provisions to be complied with in the case of tidal works) apply in relation to works authorised by a works licence as they apply in relation to works authorised by that Order.
- (9) In the carrying out of operations in pursuance of a works licence, the holder of the licence shall not
- (a) interfere with, damage or otherwise injuriously affect
    - (i) any apparatus belonging to or maintained by a statutory undertaker; or
    - (ii) the existing 18 inch and 12 inch water mains belonging to Imperial Chemical Industries plc (or their successors in title) which are laid across the bed of the River Lune; or
  - (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus or main; without the consent of the person or body concerned.

### **Licensing of dredging**

- 10.**—(1) The Commissioners may, upon such terms and conditions as they think fit, grant to any person, subject to article 23 of this Order, a licence to deepen, dredge, scour, cleanse, alter or improve the bed, foreshore and channels of the port.
- (2) Application for a dredging licence shall be made in writing to the Commissioners and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the operation to be carried out in pursuance of the licence, and, in granting any such licence, the Commissioners may require modifications in the plans, sections and particulars so submitted.
- (3) Article 9(3), (4), (5) and (6) of this Order shall apply in relation to a dredging licence as it applies in relation to a works licence.
- (4) If within three months from the receipt of an application under paragraph (2) above the Commissioners do not grant a dredging licence, they shall be deemed to have refused the application.
- (5) Unless otherwise agreed between the Commissioners and the holder of a dredging licence, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894(3)) taken up or collected in pursuance of the licence shall be the property of the Commissioners, who may
- (a) use, remove, sell or otherwise dispose of; or
  - (b) subject to paragraph (6) below, lay down or deposit the materials as they think fit.
- (6) No such materials shall be laid down or deposited in any place below the level of high water except in such a position as may be approved by the Secretary of State and subject to such conditions or restrictions as he may impose.

(7) Article 9(9) of this Order applies in relation to the carrying out of operations in pursuance of a dredging licence as it applies in relation to the carrying out of operations in pursuance of a works licence.

### **Appeals in respect of works or dredging licences**

**11.**—(1) An applicant for a works licence or a dredging licence who is aggrieved by

- (a) a refusal of the Commissioners to grant a licence; or
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Commissioners in the plans, sections and particulars submitted by the applicant; may within 28 days from the date on which the Commissioners notify the applicant of their decision, or the date on which the Commissioners are, under article 9(7) or 10(4) of this Order, deemed to have refused the application, appeal to the Secretary of State.

(2) An appeal under paragraph (1) above shall be made by notice in writing stating the grounds of appeal

- (a) (3) (a) A person who appeals under paragraph (1) above shall send to the Commissioners a copy of his notice of appeal.
- (b) The Commissioners may, within 28 days from the receipt of the notice, make to the Secretary of State representations in writing on the appeal; and, if they do, they shall as soon as reasonably practicable send a copy of their representations to the appellants.
- (4) On an appeal under paragraph (1) above, the Secretary of State may
  - (a) dismiss the appeal; or
  - (b) require the Commissioners to grant the licence or, as the case may be, to give their approval upon such terms or conditions and with such modifications (if any) of plans, sections or particulars as the Secretary of State may specify.
- (5) The Commissioners shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (4) above.

### **Powers as to moorings, etc.**

**12.**—(1) The Commissioners may place, lay down, maintain and use moorings on land within the port or on any other land with the consent in writing of the owner or leasee thereof or any other person having an interest entitling him to give that consent.

(2) The Commissioners may from time to time grant to any person, subject to article 23 of this Order, a licence (in this Order referred to as a “mooring licence”) to place, lay down, maintain or use existing or future moorings at such place or places within the port and for such number of vessels as may be specified in the licence, and on such terms and conditions as they think fit.

(3) The Commissioners shall not unreasonably refuse to grant a licence to an owner or leasee of land to place, lay down, maintain or use moorings on that land; and any question whether in such a case a grant of a licence has been unreasonably refused shall be determined by the Secretary of State.

(4) The grant of a mooring licence shall not entitle a person to place or maintain any mooring on land not owned or held on lease by him or by the Commissioners or in which he has no appropriate interest.

(5) A mooring licence shall be valid for such period, not exceeding five years, as may be specified in the licence.

(6) The Commissioners may charge a reasonable fee for the grant of the mooring licence and for the use of any moorings provided by them under paragraph (1) above.

(7) The Commissioners may confer total or partial exemptions from, allow rebates to, or make compositions with, any person with respect to the fees prescribed by them under this article; and they may vary or extinguish any such exemption, rebate or composition.

### **Obstruction, etc. of moorings**

**13.—**(1) Any person who in the port

- (a) intentionally obstructs any person acting under the authority of the Commissioners in placing, laying down, maintaining or using any moorings;
- (b) intentionally and without lawful authority or reasonable excuse pulls up or removes any moorings;
- (c) other than in the case of an emergency, causes a vessel to be moored except at a mooring provided or licensed by the Commissioners under article 12 of this Order or with the consent of the harbour master; or
- (d) without reasonable excuse places, lays down, maintains or uses any mooring which he knows is not so provided or licensed, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person contravenes paragraph (1)(d) above, the Commissioners may remove the mooring in question and recover from him the expenses incurred in so doing.

### **Power to appropriate part of port**

**14.** The Commissioners may appropriate and set apart any part of the port for the exclusive use of any particular vessel or class of vessel.

### **Power to act as ship's agent**

**15.** The Commissioners may carry on the business and activities of a ship's agent in connection with vessels using the port.