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STATUTORY INSTRUMENTS

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**2006 No. 2310**

**The Borough of Poole (Poole Harbour  
Opening Bridges) Order 2006**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct etc. works**

3.—(1) The Council may construct and maintain the scheduled works.

(2) Subject to article 4, the scheduled works may only be constructed in the lines and situations shown on the deposited plans within the limits of deviation and in accordance with the levels shown on the deposited sections.

(3) The Council may operate the new bridge and may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) works to install, or alter the position of, apparatus, including mains, sewers, drains and cables; and
- (b) works for the benefit or protection of premises affected by the scheduled works.

**Power to deviate**

4.—(1) In constructing or maintaining the scheduled works, the Council may, subject to paragraph (2), deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the deposited sections—

- (a) to any extent not exceeding 3 metres upwards as to any part of the scheduled works;
- (b) to any extent not exceeding 0.2 metre downwards as to the decking of the new bridge; and
- (c) to any extent downwards as to any other part of the scheduled works.

(2) In constructing the new bridge the Council shall provide headroom of not less than 2.5 metres above the level of high water over the central navigation channel.

**Power to make subsidiary works**

5.—(1) Subject to the provisions of this Order the Council may from time to time within the Order limits or on any land vested in the Council at the date of the making of this Order, construct and maintain, whether temporarily or permanently, all such works as may be requisite or expedient for the purposes of, or for purposes ancillary to, the construction, maintenance and use of the scheduled works.

(2) Without prejudice to the generality of paragraph (1), the Council may within the lands delineated on the deposited plans and thereon numbered 39 in the Borough of Poole construct and maintain a control centre for the purposes of operating the new bridge.

(3) Without prejudice to the generality of paragraph (1) the Council may within the designated area, for the purposes of or in connection with the construction, operation or maintenance of the scheduled works—

- (a) construct, place, alter, relocate or replace any work, mooring or structure whether temporary or permanent;
- (b) use, appropriate and dispose of any materials obtained by it in carrying out any such operations;
- (c) remove or relocate any mooring; and
- (d) temporarily moor or anchor vessels and structures and load and unload into and from such vessels or structures equipment, machinery, soil and any other materials in connection with the authorised works,

in such manner and to such extent as may appear to the Council to be necessary or convenient.

(4) Except in the case of emergency, the Council will use its reasonable endeavours to notify the owner of any mooring and the owner or master of any vessel or structure affected by the proposal to exercise the powers of paragraph (3)(a) or (c) before the exercise of those powers.

(5) The Council shall pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph 3(a) and (c).

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation shall be determined under Part 1 of the 1961 Act.

**Power to dredge for purposes of authorised works, etc.**

6.—(1) The Council, for the purposes of constructing and maintaining the scheduled works, may within the limits of dredging from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the Back Water Channel.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council thinks fit.

(3) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

*Streets*

**Power to execute street works**

7.—(1) The Council may, for the purposes of the authorised works, enter upon so much of West Quay Road and Wilkins Way in the Borough of Poole, and may—

- (a) break up or open the surface of either street, or any sewer, drain or tunnel under those streets, or tunnel or bore under those streets;
- (b) place apparatus in those streets;

- (c) maintain apparatus in those streets or change its position or remove it from those streets; and
  - (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).
- (2) This article is subject to paragraph 3 of Schedule 8 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Stopping up of streets and extinguishment of rights**

**8.—**(1) Subject to the provisions of this article, the Council may, in connection with the construction of the authorised works, stop up Wilkins Way in the Borough of Poole within the limits of deviation for the scheduled works.

- (2) Wilkins Way shall not be wholly or partly stopped up under this article unless either—
- (a) the scheduled works have been completed to the reasonable satisfaction of the street authority and are open for use; or
  - (b) a temporary alternative route for the passage of such traffic as could have used Wilkins Way is first provided and thereafter maintained by the Council, to the reasonable satisfaction of the street authority, between the commencement and termination points of the street to be stopped up until completion of the new street in accordance with sub-paragraph (a).
- (3) Where Wilkins Way has been stopped up under this article—
- (a) all rights of way over or along that part of Wilkins Way so stopped up shall be extinguished; and
  - (b) the Council may appropriate and use for the purposes of the authorised works so much of the site of Wilkins Way as is bounded on both sides by land owned by the Council.
- (4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (5) This article is subject to paragraph 2 of Schedule 8 to this Order.

### **Temporary stopping up of streets**

**9.—**(1) The Council, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
  - (b) subject to paragraph (2), prevent all persons from passing along the street.
- (2) The Council shall provide reasonable access for pedestrians going to or from premises abutting on a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.
- (3) Without prejudice to the generality of paragraph (1), the Council may exercise the powers conferred by this article in relation to Wilkins Way and West Quay Road in the Borough of Poole.
- (4) The Council shall not exercise the powers of this article—
- (a) in relation to any street specified as mentioned in paragraph (3) without first consulting the street authority; and
  - (b) in relation to any other street without the consent of the street authority, but such consent shall not be unreasonably withheld.

(5) The provisions of the 1991 Act mentioned in paragraph (6) and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by the Council under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by the Council.

(6) The provisions of the 1991 Act referred to in paragraph (5) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of Councils to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

#### **Access to works**

**10.** The Council may, for the purposes of the authorised works, form and lay out means of access or improve existing means of access in such locations within the limits of deviation shown on the deposited plans within the boundaries of the street in question, as the Council reasonably requires for the purposes of the authorised works and as may be approved by the highway authority but such approval shall not be unreasonably withheld.

#### **Construction and maintenance of new or altered streets**

**11.—(1)** Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of the Council for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) Nothing in this article shall prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the Council shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act.

(4) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part 3 of the 1991 Act apply.

#### **Agreements with street authorities**

**12.—(1)** A street authority and the Council may enter into agreements with respect to—

- (a) the construction of any new street under the powers conferred by this Order;
- (b) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (c) the execution in the street of any of the works referred to in article 7 (1).

- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### *Supplementary*

#### **Provisions relating to operation of bridges**

**13.**—(1) The Council shall open the bridges in accordance with the following provisions of this article for the purpose of facilitating navigation over the Back Water Channel.

(2) The bridges shall be opened by the Council on such occasions and for such period on each such occasion as may be specified in a programme which the Council shall determine from time to time in consultation with the Board.

(3) When determining the programme of openings required by paragraph (2) the Council shall allow for the reasonable requirements of vessels navigating, or seeking to navigate, over the Back Water Channel.

(4) Subject to paragraph (5), the Council shall also open the bridges on the date and at the time specified in a notice (whether written or not) given by the operator of any vessel over 40 metres in length which is to pass beneath the bridges, if that notice is given at least 24 hours before the day and time specified in that notice and in accordance with the requirements for giving such a notice specified in the arrangements published pursuant to paragraph (8).

(5) Where notice has been given pursuant to paragraph (4), the Council may delay the time at which the bridges are to be opened for up to half an hour after the time specified in that notice, if the Council is of the reasonable opinion that opening the bridges at the time specified in the notice would interfere unreasonably with the passage of vehicles, pedestrians, cyclists and other road users over the bridges and if the Council has on forming that opinion forthwith notified the operator of the vessel in question of the time at which the bridges will be opened.

(6) The requirement in paragraph (4) to give at least 24 hours' notice shall not apply where, in the case of an emergency, it is necessary for a vessel to navigate beneath the bridges; but in such a case the master of the vessel shall give such notice as is practicable and paragraph (5) shall not apply.

(7) Notwithstanding paragraph (4), the harbour master may at any time instruct the Council to open the bridges in stress of weather conditions, or in an emergency, or if in the reasonable opinion of the harbour master the opening of the bridges is required to preserve safe navigation within the Back Water Channel.

(8) The Council shall publish in notices displayed in a prominent position at each end of each of the bridges, and in such other positions as the Council deems advisable in order to attract the attention of those operating vessels and vehicles and of pedestrians, cyclists and other road users using the bridges, the arrangements made from time to time in relation to the opening of the bridges, including—

- (a) the procedure for opening the bridges in accordance with paragraphs (4) to (6); and
- (b) the address and telephone number of the person to whom the notice required by paragraph (4) is to be given.

#### **Drainage of authorised works**

**14.**—(1) The Council may use the Back Water Channel or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and

for those purposes may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with any sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1).

(3) The Council shall not discharge any water into any public sewer or drain except with the consent of the authority to which it belongs; and such consent may be given subject to such terms and conditions as the authority may reasonably impose but shall not be unreasonably withheld.

(4) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 89(1), (2), or (3) of the Water Resources Act 1991(2).

(5) The Council shall not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld; and

(b) where the authority has been given the opportunity to supervise the making of the opening.

(6) The Council shall take such steps as are reasonably practicable to secure that any water discharged into the Back Water Channel or any public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.

(7) In this article—

(a) “authority” means either a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority;

(b) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Protective works to buildings**

**15.**—(1) Subject to the following provisions of this article, the Council may at its own expense and from time to time carry out such protective works to any building within the Order limits as the Council considers to be necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or

(b) after the completion of the construction of that part of the authorised works in the vicinity of the building, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the Council may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the Council may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

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(1) 1991 c. 56.

(2) 1991 c. 57.

- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising a right—

- (a) under paragraph (1) to carry out protective works to a building;
- (b) under paragraph (3) to enter a building and land within its curtilage;
- (c) under paragraph (4)(a) to enter a building or land within its curtilage; or
- (d) under paragraph (4)(b) to enter land,

the Council shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 50.

(7) The Council shall compensate the owners and occupiers of any building or land in relation to which the powers of this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

the Council shall compensate the owners and occupiers of the buildings for any loss or damage sustained by them.

(9) Without prejudice to article 49, nothing in this article shall relieve the Council from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) “protective works”, in relation to a building means—
  - (i) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works; and
  - (ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works.

### **Power to survey and investigate land**

**16.—(1)** The Council may for the purposes of this Order—

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as the Council thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;

- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
  - (d) place on, leave on and remove from the land included in sub-paragraph (a) apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); and
  - (e) enter on the land included in sub-paragraph (a) for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).
- (2) No land may be entered, or equipment placed or left on or removed from land under paragraph (1) unless at least 7 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the Council—
- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
  - (b) may take with him such vehicles and equipment as are necessary to exercise any of the powers conferred by paragraph (1).
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the highway authority, but such consent shall not be unreasonably withheld.
- (5) The Council shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### **Temporary closing of the Back Water Channel in connection with works**

17.—(1) Notwithstanding anything in any other enactment or in any rule of law, the Council may temporarily close the Back Water Channel, or any part thereof, to navigation in the course of executing any works or doing anything authorised by or under this Order.

- (2) In exercise of the powers conferred by paragraph (1)—
  - (a) the Council shall execute such works or do such things as may be required to ensure that at any time no more of the Back Water Channel is closed than is reasonably necessary in all the circumstances; and
  - (b) should it be necessary at any time to close the whole of the Back Water Channel to navigation, the Council shall use its best endeavours to ensure that the minimum obstruction, delay or interference is caused to vessels which may be using or intending to use the Back Water Channel.
- (3) Before exercising the power conferred by paragraph (1) the Council, after consulting the Commissioners, shall—
  - (a) publish a notice of its intention to do so in Lloyd's List and once in each of two successive weeks in a local newspaper published or circulating in the borough of Poole, with an interval between the dates of publication of not less than 6 clear days; and
  - (b) display notice of its intention in a conspicuous position adjacent to the Back Water Channel.
- (4) Each of the notices required by paragraph (3) shall—
  - (a) state that the Council intends to execute the works or to do anything authorised by or under this Order (as the case may be) and for that purpose to close temporarily the Back Water Channel or such part of the Back Water Channel as is specified in the notice to navigation; and
  - (b) specify a date, which shall be a date not earlier than 14 days after the last date on which a notice is published pursuant to paragraph (3)(a), and the duration of the closure.



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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