
STATUTORY INSTRUMENTS

2006 No. 2310

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

PART 5

MISCELLANEOUS AND GENERAL

Power to make byelaws

39.—(1) The Council may make byelaws regulating the use and operation of the bridges and the conduct of all persons passing over the bridges or of all vessels passing through the opening spans thereof or otherwise navigating or mooring within the designated area.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may make provision—

- (a) with respect to interference with, or obstruction of, the operation of the bridges;
- (b) for prohibiting or restricting the placing or leaving of any object on any part of the bridges; and
- (c) for prohibiting the mooring of vessels alongside any part of the bridges or otherwise within such part of the designated area specified in any notice published and displayed by the Council in the manner specified in article 37(2).

(3) Byelaws made under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any byelaw made under this article may require the payment, on application for any consent, licence or other authorisation required by the byelaw, of such reasonable fees as the Council may determine.

(5) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972⁽¹⁾ (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Council under this article.

(6) The said section 236, in its application to any byelaws made under this article, shall be modified—

- (a) by the insertion at the end of subsection (4) of the words “and in Lloyd’s List or some other newspaper specialising in shipping news”; and
- (b) subject to paragraph (7), by the insertion in subsection (7) of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.

(7) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

(1) 1972 c. 70.

- (a) it shall inform the Council and require it to take any steps which the confirming authority considers to be necessary for informing persons likely to be concerned with the modification; and
 - (b) it shall not confirm the byelaws until such period has elapsed as it thinks reasonable for the consideration of, and comment upon, the proposed modification by the Council and by any other persons who have, or are likely to have, been informed of it.
- (8) The confirming authority for the purposes of the said section 236 in its application to byelaws made under this article shall be the Secretary of State.
- (9) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or
 - (b) that he had a reasonable excuse for his act or failure to act.

Saving for Trinity House

40. Nothing in this Order shall prejudice or derogate from any of the powers, rights or privileges, or the jurisdiction or authority of Trinity House.

Protection of Poole Harbour Commissioners

41. For the protection of Poole Harbour Commissioners, Schedule 5 shall have effect.

Further protection of Poole Harbour Commissioners and users of the Back Water Channel

42. For the further protection of the Commissioners and users of the Back Water Channel, the scheme of arrangements specified in Schedule 6 to this Order shall be binding upon the Council and the Commissioners and effect shall be given thereto save that—

- (a) the terms of paragraphs 2 to 4 of Schedule 6 to this Order may, with the consent of the Secretary of State, be varied in writing between the Council and the Commissioners; and
- (b) the terms of paragraphs 5 to 13 of Schedule 6 to the Order may be varied in writing between the Council and the Commissioners.

For the protection of the Environment Agency

43. For the protection of the Environment Agency, Schedule 7 to this Order shall have effect.

Statutory undertakers, etc.

44. The provisions of Schedule 8 to this Order shall have effect.

Management arrangements

45.—(1) The Council may enter into and carry into effect agreements with respect to the construction, maintenance, use, management and operation by any other person of the authorised works, and any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of, or the making of contributions towards, the cost thereof by the Council or by any other person.

(2) Any agreement under paragraph (1) may provide for the exercise by another person of the powers of the Council in respect of the authorised works.

(3) The Council may at any time lease the authorised works to another person on such terms and conditions as may be agreed.

(4) The exercise of the powers of the Council in respect of the authorised works by any person pursuant to any agreement under paragraph (1) shall be subject to the restrictions, liabilities and obligations applicable under this Order in relation to the exercise of those powers by the Council and in accordance with any restrictions, liabilities and obligations entered into by the Council in connection with this Order.

Repeals and revocations

46.—(1) Upon the date of coming into effect of this Order, the enactments mentioned in columns (1) and (2) of Part 1 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

(2) Upon the date of coming into effect of byelaws made under section 236(7) of the Local Government Act 1972 as applied by article 39(5), the enactments regulating the operation of the existing bridge mentioned in columns (1) and (2) of Part 2 of Schedule 9 to this Order (which include spent enactments) shall be repealed or revoked to the extent specified in column (3) of that Part of that Schedule.

Certification of plans, etc.

47. The Council shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections and plans referred to in this Order, and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

48.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) subject to paragraphs (5), (6), (7) and (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(2) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

(4) Where, for the purposes of this Order, a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order he shall—

(a) give notice in writing revoking any consent given by him for that purpose; and

(b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

49. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

50. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.