
STATUTORY INSTRUMENTS

1996 No. 1627

HARBOURS, DOCKS, PIERS AND FERRIES

The Whitehaven Harbour Revision Order 1996

Made - - - - - *21st June 1996*

Coming into force - - - - - *8th July 1996*

Whereas the Whitehaven Harbour Commissioners and the Whitehaven Development Company Limited (being a person appearing to the Secretary of State for Transport to have a substantial interest) have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport having, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment and whose characteristics require that it should be made subject to an environmental assessment, has directed the applicant to supply him with the information referred to in Annex III to the Directive;

And whereas the Secretary of State for Transport has in accordance with paragraph 3A of the said Schedule, furnished bodies appearing to him to have environmental responsibilities with the information supplied to him under the said paragraph 1A of that Schedule and has consulted such bodies;

And whereas objections to the application made pursuant to paragraph 3(a) of the said Schedule have been withdrawn;

And whereas the Secretary of State for Transport has considered the information supplied under the said paragraph 1A and is satisfied as mentioned in subsection (2)(b) of the said section 14;

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(4) for the purposes of making this Order), in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:—

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- (1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.
- (2) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10. Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1336), regulations 3 and 4 and amended by S.I. 1992/1421.
- (3) OJ No. L175, 5.7.85, p.40.
- (4) For the definition of “the Minister”(mentioned in section 14(7)), see section 57(1).
- (5) S.I. 1981/238.

PART I

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Whitehaven Harbour Revision Order 1996 and shall come into force on 8th July 1996.

(2) The Whitehaven Town and Harbour Acts and Orders 1708 to 1991 and this Order may be cited together as the Whitehaven Town and Harbour Acts and Orders 1708 to 1996.

Interpretation

2. In this Order unless the context otherwise requires—

“the Act of 1847” means the Harbours, Docks, and Piers Clauses Act 1847(6);

“authorised works” means Work Nos. 1 to 10 and any other works authorised by this Order, or any part of such works;

“the Commissioners” means the Whitehaven Harbour Commissioners;

“the Custom House Dock” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections prepared in duplicate, signed by an Assistant Secretary in the Department of Transport and marked “Plans and sections referred to in the Whitehaven Harbour Revision Order 1996” one copy of which is deposited at the offices of the Department of Transport and the other at the offices of the Commissioners;

“general direction” means a direction authorised by article 24 (General directions to vessels) below;

“the harbour” means the port, harbour and docks of Whitehaven and all docks, quays, piers, wharves, buildings, land, property, houses, offices, sheds, buoys and moorings connected therewith, and any addition to or improvement in the harbour made from time to time by the Commissioners;

“the harbour master” means the harbour master of the Commissioners and includes his authorised deputies and assistants and any person authorised by the Commissioners to act in that capacity;

“the Inner Harbour” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

“the level of high water” means the level of mean high-water springs;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“the North Harbour” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

“the Old North Wall”, “the North Wall” and “the Old Quay” mean respectively the walls and quay known as such and shown and referred to as such on the deposited plans;

“the Outer Harbour” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

“the Queens Dock” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

(6) 1847 c. 27.

“reference point” means Ordnance Survey National Grid reference point;

“the South Harbour” is the part of the harbour known as such and shown and referred to as such on the deposited plans;

“special direction” means a direction authorised by article 26 (Special directions to vessels) below or by section 52 of the Act of 1847;

“tidal works” means so much of any work authorised by this Order as is on, under or over tidal waters;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the undertaking for the time being of the Commissioners; and

“vessel” means every description of vessel, however propelled or moved, and includes hovercraft, any floating manufactured article, anything constructed or used to carry persons or goods by water, and, except for purpose of levying rates, a seaplane on or in the water.

PART II

Works

Power to construct, etc., works

3.—(1) Subject to the provisions of this Order, the Commissioners may, in the lines and situations and within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections, construct and maintain the works hereinafter described with all necessary works and conveniences connected therewith—

Work No. 1

A lock structure, enclosing a basin of width 13.7 metres and length 30 metres, having an overall length of 53 metres, an overall width of 35 metres, bounded on both sides by retaining walls and enclosed at both ends by gates having a width of 13.7 metres, extending from the Old North Wall to Work No. 2 and incorporating a two-storey control room.

Work No. 2

An extension of the Old Quay commencing in a north north easterly direction for a distance of 14 metres terminating at Work No. 1 and having an overall width of 10 metres.

Work No. 3

The construction of openwork fendering, commencing at the south south west retaining wall of Work No. 1 and extending in a west north westerly direction for a distance of 50 metres and there terminating.

Work No. 4

The construction of toe protection to the North Wall in rock and geotextile fabric, commencing at reference point NX 297204518603, 180 metres north east from the commencement of Work No. 1 and extending in a westerly direction for a distance of 111 metres to reference point NX 297096518625 and there terminating.

Work No. 5

The construction of toe protection to the Old North Wall in rock and geotextile fabric, commencing at Work No. 1 at reference point NX 297083518513, 32 metres east north east from the commencement of Work No. 1 and extending for a distance of 117 metres to reference point NX 297076518613 and there terminating.

Work No. 6

Piled moorings together with a pontoon system to be constructed or placed in the Inner Harbour commencing with a bridge connection at reference point NX 297222518262 and extending in a north westerly direction for a distance of 175 metres to reference point NX 297088518373 and there terminating.

Work No. 7

Piled moorings together with a pontoon system to be constructed or placed in the Custom House Dock commencing with a bridge connection at reference point NX 297148518212 and extending in a north westerly direction for a distance of 90 metres to reference point NX 297096518285 and there terminating.

Work No. 8

Piled moorings together with a pontoon system to be constructed or placed in the South Harbour commencing with a bridge connection at reference point NX 297060518160 and extending in a north westerly direction for a distance of 110 metres to reference point NX 297022518263 and there terminating.

Work No. 9

Piled moorings together with a pontoon system to be constructed or placed in Queens Dock commencing with a bridge connection at reference point NX 297269518386 and extending in a north north easterly direction for a distance of 50 metres to reference point NX 297391518425 and there terminating.

Work No. 10

The construction of toe protection to the Old Quay in rock and geotextile fabric commencing at reference point NX 297074518448, 63 metres south south east from the commencement of Work No. 1 and extending for a distance of 49 metres to reference point NX 297076518613 and there terminating.

(2) The Commissioners may, within the limits of deviation, from time to time alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised works.

Power to make subsidiary and accommodation works

4. Subject to the provisions of this Order, the Commissioners may from time to time construct and maintain—

- (a) within the limits of deviation all such works, conveniences, appliances and apparatus as they from time to time deem necessary or expedient for the purposes of or in connection with or incidental to the construction, maintenance and use of the works authorised by article 3; and
- (b) within the harbour such works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing, pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buoys, bollards, navigation marks and lights.

Power to deviate

5. In constructing the works authorised by article 3 the Commissioners may deviate laterally from the lines or situations thereof shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels of those works shown on the deposited sections to any extent not exceeding two metres upwards and to such extent downwards as may be found necessary or convenient.

Strengthening of sea wall

6. The Commissioners may undertake works including grouting for the strengthening of the sea walls shown on the deposited plans and there referred to as the Old Quay, the North Wall and the Old North Wall respectively.

Fine for obstructing works

7. Any person who intentionally obstructs any person acting under the authority of the Commissioners in setting out the lines of the authorised works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Commissioners as a debt any expenses incurred by them in making good any damage resulting from such obstructions, moving or removal.

Tidal works not to be executed without approval of Secretary of State

8.—(1) A tidal work shall not be constructed, altered, enlarged, replaced, relaid, extended or reconstructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, enlarged, replaced, relaid, extended or reconstructed in contravention of this article or of any condition or restriction imposed under this article—

- (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 thereof to its former condition; and, if on the expiration 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 works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work or part of it and restore the site to its former condition;

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

Provision against danger to navigation

9.—(1) In 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 shall from time to time direct.

(2) If without reasonable excuse the Commissioners fail to notify Trinity House as required by this article or to comply in any respect with a direction given under this article, they shall be 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

10.—(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 the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such 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, on the expiration 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 works specified in the notice; and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

Survey of tidal works

11. The Secretary of State may at any time, if he deems it expedient, 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 the Secretary of State in any such survey and examination shall be recoverable from the Commissioners.

Permanent lights on tidal works

12.—(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, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall 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 liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for the Commissioners to prove that all due diligence was used to secure compliance with the direction.

Lights on tidal works during construction

13.—(1) The Commissioners shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension thereof exhibit every night from sunset to sunrise such lights, if any, 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 in any respect with a direction given under this article, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine; but it shall be a defence for the Commissioners to prove that all due diligence was used to secure compliance with the direction.

PART III

Further powers as to management and regulation of harbour

General powers of Commissioners in respect of harbour

14.—(1) Without prejudice to any power conferred on them by the provisions of the Whitehaven Town and Harbour Acts and Orders 1708 to 1991, the Commissioners may, subject to the provisions of this Order, take such steps from time to time as they may consider necessary for the improvement, maintenance and management of the harbour and the facilities (including recreational facilities) afforded therein or in connection therewith.

(2) 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;

- (b) do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the harbour.

Operation of lock

- 15.** The Commissioners shall shut the lock gates forming part of Work No. 1 at any time—
- (a) where it appears to them to be necessary to do so to prevent or alleviate flooding or to meet any other emergency; or
 - (b) if requested to do so by the Environment Agency for a purpose mentioned in paragraph (a) above.

Restriction of Inner Harbour, Custom House Dock and South Harbour to pleasure craft and certain other vessels

16.—(1) Notwithstanding section 33 of the Act of 1847 (Harbour, dock and pier to be free to the public on payment of rates) as incorporated by any provision of the Whitehaven Town and Harbour Acts and Orders 1708 to 1991, but subject to the provisions of this Order, the waters of the Inner Harbour (except so far as being used for access between the Outer Harbour and North Harbour and Queens Dock), Custom House Dock and South Harbour shall be for the exclusive use of vessels falling within paragraph (2) below and accordingly the Commissioners shall not permit any other vessel to use those waters.

- (2) Each of the following vessels fall within this paragraph—
- (a) a pleasure craft;
 - (b) a vessel for the carriage of not more than 100 passengers where that vessel is used for berthing, landing or embarking passengers;
 - (c) a vessel which is, for the time being, used for or in connection with sea fishing for recreation;
 - (d) a vessel for the time being employed for the purposes of any of the functions of the Commissioners;
 - (e) a vessel for the time being employed in the supply of goods for use or for sale at premises situated on lands adjacent to the harbour;
 - (f) a vessel for the time being employed in connection with the provision of services at the harbour or on lands adjacent thereto;
 - (g) a lifeboat or a vessel used by the coastguard service, Trinity House or the Ministry of Defence;
 - (h) a vessel for the time being used for the purposes of the Cumbria Sea Fisheries Committee.

(3) In paragraph (2) above “pleasure craft” means any vessel of not more than 100 tons gross used wholly or mainly for recreation and not for the carriage of passengers or goods for reward.

- (4) For the purposes of this article, the tonnage of a vessel shall—
- (a) in the case of a vessel having a tonnage figure recorded in its certificate of registry, be taken to be that figure; and
 - (b) in the case of any other vessel, be calculated in accordance with the provisions of Appendix 5 to Schedule 5 to the Merchant Shipping (Tonnage) Regulations 1982(7).

(5) Nothing in this article shall prevent fishing vessels from using the waters of Custom House Dock and South Harbour until the completion of a new integrated fishing facility to be constructed on harbour land to the north of North Harbour and Queen’s Dock.

(7) S.I. 1982/841, to which there are amendments not relevant to this Order.

Exclusion of certain commercial vessels from the waters of the harbour

17.—(1) Notwithstanding section 33 of the Act of 1847 (Harbour, dock and pier to be free to the public on payment of rates) as incorporated by any provision of the Whitehaven Town and Harbour Acts and Orders 1708 to 1991, and without prejudice to the provisions of article 16 above, the Commissioners shall not permit any vessel carrying a cargo specified in paragraph (2) below to use the waters of the harbour.

- (2) The cargoes referred to in paragraph (1) above are—
- (a) unpackaged scrap metal;
 - (b) aggregates or fine powders;
 - (c) corrosive or volatile chemicals;
 - (d) radioactive material other than radio isotopes or other material used solely for the purposes of scientific research;
 - (e) bulk minerals;
 - (f) toxic waste;
 - (g) animal slurry.

Power to appropriate part of harbour

18.—(1) Without prejudice to articles 16 and 17 above, the Commissioners may from time to time set apart and appropriate any part of the harbour for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the Commissioners may think fit.

(2) No person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Commissioners, and—

- (a) the harbour master or, as the case may be, such officer, may order any person or vessel making use thereof without such consent to leave or be removed; and
- (b) the provisions of section 58 of the Act of 1847 (powers of harbour master as to mooring of vessels in harbour) shall extend and apply with the necessary modifications to any such vessel.

Power to provide, etc., vessels, equipment, etc.

19. The Commissioners may provide, purchase, take on lease, hire and use such vessels (including dredgers, tugs, hoppers or barges), vehicles, plant, machinery, apparatus or equipment (including dredging appliances or apparatus) as they may think necessary for the carrying on of the undertaking or otherwise effecting the purposes of this Order and may let the same on hire (with or without the services of their employees) for such sums and upon and subject to such terms and conditions as they may think fit or may sell or otherwise dispose of the same where vested in them.

Life-saving craft and appliances

20.—(1) Without prejudice to any duty or power imposed or conferred on them by any other statutory provision, for the purpose of saving life the Commissioners may provide and maintain in or in the vicinity of the harbour—

- (a) boats or other vessels together with all necessary apparatus and equipment and buildings, structures, slipways and moorings for the operation or maintenance or accommodation of the same;

- (b) lifebuoys, lifelines and other life-saving appliances together with structures for the storage and safe keeping of such appliances.

(2) The Commissioners may enter into arrangements with any person for the provision and maintenance of any of the facilities authorised by paragraph (1) above.

Power to arrange exhibitions, regattas, etc.

21. The Commissioners and any person authorised by them may hold exhibitions, shows, regattas, competitions, contests and other entertainments in or in connection with the harbour.

Parking places

22. The Commissioners may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

Byelaws as to harbour

23.—(1) In addition to the byelaws which may be made by the Commissioners under section 83 of the Act of 1847 or any enactment contained in the Whitehaven Town and Harbour Acts and Orders 1708 to 1991, the Commissioners may make byelaws for the good rule and government of the harbour and, without prejudice to the generality of the foregoing, for all or any of the following purposes:—

- (a) for regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities provided by the Commissioners;
- (b) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;
- (c) for regulating, preventing or licensing the conduct of all persons in vessels or otherwise in the harbour, not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties as such;
- (d) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specification of moorings in the harbour;
- (e) for preventing or removing obstructions or impediments within the harbour;
- (f) for regulating the launching of vessels within the harbour;
- (g) for regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbour;
- (h) for regulating or preventing the use in the harbour or on board any vessel therein of fires, lights or any other equipment, tools or appliances which the Commissioners consider involves a risk of fire and for the prevention of smoking;
- (i) for regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse) and sewage from vessels in the harbour;
- (j) for the prevention of the disposal of such rubbish and sewage as aforesaid in the harbour;
- (k) for prohibiting the use of or regulating the movement, speed and parking of vehicles within the harbour;
- (l) for requiring the use of effectual silencers and the general control of noise on vessels in the harbour;
- (m) for regulating vessels in the harbour and their entry into and departure from the harbour 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 harbour;
- (n) for regulating the embarkation of persons into, or their disembarkation from, vessels within the harbour;
- (o) for regulating the holding of regattas and other public events in the harbour;
- (p) for prescribing the lights and signals to be exhibited or made—
- (i) by vessels aground within the harbour;
 - (ii) by devices used for marking obstructions within the harbour;
 - (iii) for assisting the navigation of vessels within the harbour, at the entrance to any dock or at any wharf, pier or other work;
- (q) for the prevention of nuisances in the harbour;
- (r) for preventing or regulating the discharge by land or sea of any material or thing within the harbour or the approaches thereto;
- (s) for regulating or preventing 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 harbour;
- (t) for regulating or preventing aquaplaning, water skiing or diving or other underwater activities in the harbour;
- (u) for regulating or preventing bathing, and for securing the protection of bathers, within the harbour;
- (v) for regulating or preventing the use by vehicles of the foreshore within the harbour;
- (w) for regulating the use of ferries within the harbour; and
- (x) for regulating the exercise of the powers vested in the harbour master.
- (2) In this article “signals” includes sound signals.
- (3) Byelaws made under this article or any other enactment may be expressed to be applicable within all or any part of the harbour and different byelaws may be so made in relation to different classes of vessels.
- (4) The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972(8) shall apply to all byelaws made by the Commissioners under this article or any other enactment.
- (5) In its application to byelaws made by the Commissioners under this article or any other enactment subsection (7) of the said section 236 shall, subject to paragraph (6) below, be construed as if it had been amended by the insertion of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.
- (6) Where the confirming authority proposes to make a modification which appears to him to be substantial, then—
- (a) he shall inform the Commissioners and require them to take any steps he thinks necessary for informing persons likely to be concerned with that modification; and
 - (b) he shall not confirm the byelaws until there has elapsed such a period as he thinks reasonable for the Commissioners and other persons who have been informed of the proposed modification to consider and comment on it.
- (7) The confirming authority for the purposes of this article and of the said section 236 in its application to byelaws made by the Commissioners shall be the Secretary of State.

(8) Byelaws made by the Commissioners under this article or any other enactment may contain provisions imposing upon a person offending against any byelaw a fine on summary conviction not exceeding level 3 on the standard scale.

(9) In proceedings for an offence against byelaws made by the Commissioners under this article or any other enactment, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

(10) Section 14 of the Whitehaven Harbour Act 1962⁽⁹⁾ and section 6 of the Whitehaven Harbour Act 1981⁽¹⁰⁾ (which are replaced by this article) are hereby repealed.

General directions to vessels

24.—(1) The Commissioners may, after consultation with the Chamber of Shipping in each case of an exercise of the powers, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour and the approaches thereto and, without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the approaches thereto which vessels are to use, or refrain from using, for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for the purposes of this paragraph.

(2) Directions given under paragraph (1) above may apply—

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; and
- (b) to the whole of the harbour and the approaches thereto, or to a part designated, or the designation of which is provided for, in the direction; and
- (c) at all times or at times designated, or the designation of which is provided for, in the direction;

and every direction given under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) above.

(3) The Commissioners may, after consultation with the Chamber of Shipping, revoke or amend directions given under this article.

Publication of general directions

25.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in case of emergency, be published by the Commissioners as soon as practicable once in Lloyd's List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies thereof may be inspected and bought, and the price thereof.

(2) In an emergency, notice of the giving of a general direction or of any amendment or revocation of a general direction may be given in any manner the Commissioners consider appropriate.

Special directions to vessels

26.—(1) In addition to the directions which he may give under section 52 of the Act of 1847 the harbour master may give a direction under this article requiring any vessel anywhere within the harbour or the approaches thereto to comply with a requirement made in or under a general direction.

(9) 1962 c.ix.

(10) 1981 c.xvi.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

Master's responsibility to be unaffected

27. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property.

Failure to comply with directions

28. The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Enforcement of directions

29.—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but he shall not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Commissioners from the owner of the vessel.

Power to give directions as to loading or unloading of certain goods

30.—(1) Subject to articles 16 and 17 above and without prejudice to article 18 above, the Commissioners may designate any part of the harbour for the loading and unloading of any goods to which this article applies.

(2) Where pursuant to paragraph (1) above the Commissioners have designated a place for the loading or unloading of goods of any description the harbour master may direct that goods of that description, intended to be loaded onto or unloaded from a vessel, shall not be deposited or received elsewhere than at the place so designated; and, if any person disobeys any such direction, the Commissioners may remove the goods to the place so designated, and any expense incurred by them in so doing shall be recoverable from that person.

(3) The goods to which this article applies are goods in bulk and goods the nature or character of which is such as, in the opinion of the Commissioners, to give rise to special risk of contamination, taint, stain, injury or danger to other goods or to persons, property or water or to necessitate the provision of special facilities for the handling thereof or for the safety, protection, welfare or accommodation of persons employed in, or in connection with, such handling but not including fish or fishing tackle.

Power to deal with unseaworthy vessels

31.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 and on the Commissioners by any other enactment, the Commissioners may remove, sell, destroy or otherwise dispose of any vessel laid by or neglected as unseaworthy in, or on land adjoining, the waters of the harbour or the approaches thereto.

(2) The Commissioners may retain out of the proceeds of sale of any such vessel, or any part thereof, any expenses incurred by them in respect of the vessel or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbour master under section 57 of the Act of 1847, and shall pay the surplus, if any, to the person entitled thereto.

(3) If the proceeds of sale are insufficient to reimburse the Commissioners for the said expenses, or there is no sale, the Commissioners may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner.

(4) Except in a case of emergency, the Commissioners shall, before exercising their powers under this article, give seven clear days' notice in writing of their intention to do so to the registered owner of the vessel and by advertisement in each of three successive weeks in a local newspaper; and if before the notice expires the Commissioners receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, the Commissioners shall not exercise the powers of this article in relation to that vessel until the expiration of 7 days beginning with the date of 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 or business at the harbour which may be given to him by the harbour master.

(5) If the owner or his place of business or abode is not known to the Commissioners or is outside the United Kingdom, the notice mentioned in paragraph (4) above may be given by displaying it at the office of the Commissioners for the period of its duration.

Removal of obstructions other than vessels

32.—(1) The Commissioners may remove anything, other than a vessel, in, or on land adjoining, the waters of the harbour or the approaches thereto—

- (a) which is causing, or likely to cause, an obstruction to, or interference with, navigation;
- (b) which is causing, or likely to cause, interference with the operation of any works of the Commissioners, or damage to any such works or to any property; or
- (c) which is in the harbour without lawful authority;

and may take such steps as appear to them to be appropriate to prevent or minimise such obstruction, interference or damage.

(2) Where the Commissioners—

- (a) remove anything under paragraph (1) above; and
- (b) can readily identify its owner or a person whom they reasonably believe to be its owner;

the Commissioners shall, within 28 days of its coming into their custody, give written notice to that person stating that, upon proof of ownership to the reasonable satisfaction of the Commissioners possession may be retaken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served) and, if possession of the thing removed is not so retaken, it shall at the end of that period vest in the Commissioners.

(3) The Commissioners may, at such time and in such manner as they think fit—

- (a) dispose of anything removed under paragraph (1) above in the case of which paragraph (2) does not apply, or
- (b) notwithstanding paragraph (2) above, dispose of anything so removed,

which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(4) If anything disposed of by the Commissioners under this article is sold, the Commissioners may retain out of the proceeds of sale any expenses incurred by them under this section and any surplus—

- (a) shall be paid to any person who within three months from the time when the thing came into the custody of the Commissioners proves to the reasonable satisfaction of the Commissioners that he was the owner thereof at that time; or
- (b) if within the said period no person proves his ownership at the said time, shall vest in the Commissioners.

(5) If the proceeds of the sale of anything removed under this article are insufficient to reimburse the Commissioners for the said expenses, or there is no sale, the Commissioners may recover the deficiency, or, where there is no sale, the whole of the expenses, from the person who was the owner at the time when the thing removed came into the custody of the Commissioners or who was the owner at the time of its abandonment or loss.

Removal of vehicles

33.—(1) If a vehicle is left without the permission of the Commissioners—

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour; or
- (b) in any part of the harbour where the parking of vehicles is prohibited by notice erected by the Commissioners;

the Commissioners may, at the risk of the owner, remove the vehicle or cause it to be removed.

(2) Any notice erected under paragraph (1)(b) above shall be conspicuously posted in or close to the place to which it relates.

(3) Where the Commissioners in exercise of the powers of this article remove a vehicle or cause it to be removed they shall as soon as practicable report that fact to a constable or to a police station.

(4) The expenses of and incidental to the removal of a vehicle under this article shall be recoverable from any person responsible.

(5) For the purposes of paragraph (4) above “person responsible” means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under paragraph (1) above, unless he shows that he was not concerned in, and did not know of, its being put there; or
- (b) any person by whom the vehicle was put in that place.

(6) If the Commissioners in exercise of the powers of this article remove a vehicle to a place not readily visible from the place whence it is so removed they shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 1971(11) or any other regulations having the like effect for the time being in force, at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.

(7) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour.

Boarding of vessels

34. A duly authorised officer of the Commissioners may, on producing if so required his authority, enter and inspect a vessel in the harbour for the purposes of any enactment relating to the harbour

(including any enactment so relating contained in subordinate legislation) or of any byelaw of the Commissioners relating to the harbour, including the enforcement thereof.

General rules for navigation

35. A master who navigates his vessel in the harbour—

- (a) without due care and attention; or
- (b) in a manner liable to injure or endanger persons, other vessels, the banks of the harbour (whether above or below the level of high water) or any facility, structure or installation in or adjoining the harbour;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Vessels adrift

36.—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) of this article to prove that the vessel did not become adrift as the result of any neglect or default on his part.

PART IV

Financial and miscellaneous

Charges for services or facilities

37. In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover such reasonable charges for services and facilities provided by them at the harbour as they may from time to time determine.

Payment of charges

38.—(1) A charge which the Commissioners are for the time being authorised to demand, take and recover in respect of a vessel or goods or otherwise shall be payable before the removal from the harbour of any vessel or goods in respect of which they are payable, and may be demanded, taken and recovered by such persons, at such places, at such times and under such conditions as the Commissioners may from time to time specify in their published list of charges.

(2) Charges payable to the Commissioners shall be payable by the owners of any vessel or goods in relation to which the charges are payable.

(3) Where a charge payable to the Commissioners may be recovered by them from more than one person, the persons from whom it may be recovered shall be jointly and severally liable.

Deposit for charges

39. The Commissioners may, if they think fit, require any person who is or may become liable to pay charges to the Commissioners to deposit with their collector, or to guarantee, such sum as in the opinion of the Commissioners is reasonable having regard to the probable amount of the charges.

Recovery of charges

40. In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with the Whitehaven Town and Harbour Acts and Orders 1708 to 1991 (and, in a case where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay the same or any part thereof, whether or not the Commissioners' collector has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Commissioners may recover any dues, rates, rents or other charges payable to them as a debt in any court of competent jurisdiction.

Power to lease etc.

41.—(1) The Commissioners may at any time lease or grant for harbour purposes the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between the Commissioners and the persons taking the same.

(2) Section 23 of the Act of 1847 (Power to lease wharfs, warehouses, etc.), as incorporated by any provision of the Whitehaven Town and Harbour Acts and Orders 1708 to 1991, shall cease to have effect.

Crown rights

42. Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Commissioners to take, use or in any manner interfere with any part of the shore or bed of the sea or any river, channel, creek, bay or estuary or any land, hereditaments, or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners, on behalf of Her Majesty, first had and obtained for that purpose.

Signed by authority of the Secretary of State for Transport

21st June 1996

J D Henes
An Under Secretary in the
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises the Whitehaven Harbour Commissioners to construct works at the harbour, including a new lock between the Outer and Inner Harbour, the extension and strengthening of the harbour walls, and the provision of piled moorings together with pontoon systems in the Inner Harbour, Custom House Dock, South Harbour and Queens Dock. The Order excludes certain commercial vessels from the use of the harbour and restricts the Inner Harbour, Custom House Dock and South Harbour to pleasure craft and certain other vessels.

The Order also makes provision in modern terms for the management of the harbour, particularly by conferring on the Commissioners or officers of the Commissioners various powers (for example, general powers for the improvement of the harbour; and power to make byelaws, to give directions to vessels, to remove obstructions, and to grant leases).