
STATUTORY INSTRUMENTS

2007 No. 3463

HARBOURS, DOCKS, PIERS AND FERRIES

The Maryport Harbour Revision Order 2007

Made - - - - - *6th December 2007*

Coming into force - - - - - *29th December 2007*

The Commissioners for the Harbour of Maryport have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

The Secretary of State for Transport is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State for Transport, being the appropriate Minister under section 14(7)(2) of that Act, in exercise of the power conferred by that section and now vested in him(3), makes the following Order:

PART 1

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Maryport Harbour Revision Order 2007 and shall come into force on 29th December 2007.

(2) The Maryport Harbour Acts and Order 1866 to 1939(4) and this Order may be cited together as the Maryport Harbour Acts and Orders 1866 to 2007.

Interpretation

2. In this Order, unless the context otherwise requires—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(5);

(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1.

(2) For the definition of “the Minister” (mentioned in Section 14(7)) see section 57(1).

(3) S.I. 1981/238.

(4) See 1866 c. ccxlv, 1868 c. lxx, 1877 c. xxxviii, 1878 c. cliii, 1879 c. ci, 1882 c. clviii, 1884 c. clxxxix, 1894 c. cvi, 1936 c. lxxxii and 1939 c. xii.

(5) 1847 c. 27.

“aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same;

“appointing body” means any of the persons by whom Members are, or are to be, appointed in accordance with article 5 and includes the selection panel;

“the Authority” means the Maryport Harbour Authority as reconstituted and renamed by this Order;

“the Borough Council” means Allerdale Borough Council;

“charges” means the charges, rates, tolls or dues which the Authority are for the time being authorised to demand, take and recover in relation to the undertaking;

“the Commissioners” means the Commissioners for the harbour of Maryport;

“the County Council” means Cumbria County Council;

“dredging licence” means a licence granted under article 37;

“the existing Commissioners” means the Commissioners immediately before the new constitution date;

“the existing marina works” means the works forming the marina in Senhouse dock and shown for identification purposes on the harbour map;

“the existing works” means the works comprised in the harbour as existing under the Maryport Harbour Acts and Order 1866 to 1939 at the commencement of this Order and includes the existing marina works;

“general direction” means a direction given under article 28;

“the general manager” means the general manager of the Authority, referred to in article 66;

“the harbour” means the area described in article 15 of and Schedule 3 to this Order;

“the harbour land” means, subject to article 67, the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied and administered by, the Authority as part of the undertaking;

“the harbour map” means the map signed in duplicate by the Head of Ports Division in the Department for Transport and marked “Harbour map referred to in the Maryport Harbour Revision Order 2007”, of which one is deposited at the offices of the Department for Transport and one at the offices of the Authority;

“the harbourmaster” means the harbourmaster appointed by the Authority and in relation to the harbour includes his authorised deputies and assistants and any person authorised by the Authority to act as harbourmaster;

“hovercraft” has the same meaning as in the Hovercraft Act 1968(6);

“hydrofoil vessel” means a vessel, however propelled, designed to be supported on foils;

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

“master” in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

“Member” means a member of the Authority;

“the new constitution date” means 1 February 2008;

“personal watercraft” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar-operated linkage system (with or without a rudder at the stern); or
- (b) by the person or persons riding the craft using his body weight for the purpose; or
- (c) by a combination of the methods referred to in paragraph (a) and (b);

“the repealed enactments” means the enactments specified in Schedule 5 to this Order;

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre on water but not a hovercraft or hydrofoil vessel;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990⁽⁷⁾;
- (b) any other person who has a duty or power under the Land Drainage Act 1991⁽⁸⁾;
- (c) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949⁽⁹⁾; and
- (d) any operator of a telecommunications code system;

“tidal work” means so much of any work as is on, under or over tidal lands below the level of high water and existing at the commencement of this Order;

“the Town Council” means the Maryport Town Council;

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

“the undertaking” means the harbour undertaking of the Authority for the time being;

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans and mobile homes and includes a hovercraft or any other amphibious vehicle;

“vessel” means every description of vessel, however propelled or moved, and includes any thing constructed or used to carry persons or goods by water, and a seaplane on or in the water, a hovercraft and a hydrofoil vessel.

Incorporation of enactments

3.—(1) The 1847 Act, (except sections 6 to 22, 24 to 26, 48 to 50, 79 to 83 and 85 to 109) is incorporated with and forms part of this Order.

(2) In construing the provisions as so incorporated—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the Authority and the expression “the harbour, dock or pier” means the harbour;
- (b) the expressions “master” and “vessel” are to have the meanings ascribed to them in this Order rather than those in the 1847 Act;
- (c) section 52 extends to empower the harbourmaster to give directions prohibiting the mooring within a harbour area of any vessel;
- (d) notice given by the harbourmaster to the master of a vessel under section 53 need not be in writing but may be given orally, or in any other reasonable manner;
- (e) section 58 has effect in accordance with article 20(2);

⁽⁷⁾ 1990 c. 8.

⁽⁸⁾ 1991 c. 59.

⁽⁹⁾ 1949 c. 74: Section 1 was amended by the Local Government Act 1972 (c. 20), Schedule 30.

- (f) section 63 has effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
 - (g) section 69 has effect subject to the modification that for the words “shall forfeit a sum” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;
 - (h) section 72 has effect subject to the modification that for the words “shall for every offence” to the end of the section there are substituted the words “shall be liable on summary conviction to a penalty not exceeding level 2 on the standard scale”.
- (3) Sections 15, 53, 56, 58 to 60, 62 to 65, 67, 69 to 74, 99 to 102, 104 and 109 to 111 of the Commissioners Clauses Act 1847(10), are incorporated with and form part of this Order.
- (4) The Commissioners Clauses Act 1847 as so incorporated shall have effect as if for references—
- (a) to the clerk there were substituted references to the general manager;
 - (b) for references to the commissioners there were substituted references to the Authority; and
 - (c) for references to a commissioner there were substituted references to a Member.

PART 2

Alteration of Name of Commissioners and Constitution of the Authority

New name of Commissioners

4. On and after the new constitution date the Commissioners shall be known as the Maryport Harbour Authority.

Constitution of Authority

5.—(1) On and after the new constitution date, the Authority shall, subject to paragraph (2) and articles 7, 9 and 12, consist of—

- (a) one Member appointed by the County Council or, should they fail to make an appointment, by the Authority;
 - (b) one Member appointed by the Borough Council or, should they fail to make an appointment, by the Authority;
 - (c) one Member appointed by the Town Council or, should they fail to make an appointment, by the Authority;
 - (d) three Members appointed by the Authority; and
 - (e) the general manager.
- (2) The first appointments which are—
- (a) to be made by the Authority under paragraph (1)(d); and
 - (b) (if necessary) made by the Authority under paragraph (1)(a), (b) or (c) shall be made by the selection panel, established under paragraph (3).
- (3) The selection panel shall consist of—
- (a) one person appointed by the Commissioners;

- (b) one person appointed by the North West Development Agency; and
- (c) one person appointed by the West Cumbria Development Fund.

Selection of members

6.—(1) Each Member appointed under article 5(1)(a) to (d) shall be a person who appears to the body appointing him to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Authority of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge, experience or ability in one or more of the following matters—

- (a) management of harbours;
- (b) shipping or other forms of transport;
- (c) navigation;
- (d) boating and water related leisure activities;
- (e) commercial, financial or industrial matters;
- (f) administration;
- (g) the organisation of workers;
- (h) environmental matters;
- (i) the laws of England; and
- (j) any other skills and abilities considered from time to time by the Authority to be relevant to the discharge by them of their functions.

(2) In making an appointment under article 5(1) or article 12(1), the Authority shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

Appointment and terms of office of first members

7. The first appointments under article 5(1)(a) to (d) shall be made on, or as soon as reasonably practicable after the date on which this Order comes into force and of the Members so appointed—

- (a) two, one of whom shall be appointed under article 5(1)(b) and one under article 5(1)(d), shall hold office from the new constitution date until 31 January 2009;
- (b) two, one of whom shall be appointed under article 5(1)(a) and one under article 5(1)(c), shall hold office from the new constitution date until 31 January 2010; and
- (c) two, who shall be appointed under article 5(1)(d), shall hold office from the new constitution date until 31 January 2011.

Terms of office of subsequent members

8. A Member appointed under article 5(1)(a) to (d) (other than a Member holding office for a term prescribed in article 7 or appointed under article 12) shall, subject to articles 10 and 11 of, and paragraphs 3 and 9 of Schedule 2 to, this Order, hold office for the period of three years from 1st February next following his appointment.

Transitional co-opted member

9.—(1) To ensure that the Authority have sufficient experience for the efficient exercise of their functions on and after the new constitution date, the existing Commissioners shall before that date co-opt from their number one other Commissioner to serve, in addition to the Members appointed

under article 5, as a co-opted Member for a period of six months beginning on the new constitution date.

(2) The Member co-opted under paragraph (1) shall not be entitled to vote on any matter to be decided by the Authority or any committee of the Authority.

Declaration to be made by members

10. No person shall act as a Member until he has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect), and a person shall cease to be a Member if he fails to make that declaration within three months of the date of his appointment.

Power to co-opt additional members

11. Notwithstanding article 5, the Members if they see fit may at any time co-opt up to two additional Members at any time for a fixed term of up to twelve months.

Casual vacancies

12.—(1) A casual vacancy arising in the office of a Member appointed by the Authority shall, unless it is not reasonably practicable to do so, be filled by the appointment of a Member by the Authority and any such appointment shall be made in accordance with the requirements of article 6.

(2) A Member appointed to fill a casual vacancy under this article shall hold office (unless he previously dies or otherwise ceases to be a Member) during the remainder of the term for which the member whom he replaces was appointed.

Provisions applying to Members

13. On and after the new constitution date, Schedule 2 to this Order shall have effect with respect to the Members.

Advisory bodies

14.—(1) The Authority shall establish one or more advisory body or bodies which the Authority shall consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) The Authority shall make arrangements for every such advisory body to meet not less than twice a year.

(3) The Authority shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by such an advisory body whether or not that advisory body has been consulted by the Authority on the matter, recommendation or representation so referred or made.

(4) The advisory body or bodies established pursuant to this article shall consist of such number or numbers of persons appointed by the Authority as the Authority shall from time to time consider appropriate.

(5) Appointments to any such advisory body shall be made by the Authority in accordance with a scheme prepared by them for that purpose and the scheme shall provide for the appointment of persons who, in the opinion of the Authority, are representative of persons having an interest in the functioning of the harbour.

(6) Any such advisory body may determine its own quorum and procedure and shall appoint a chairman.

(7) An individual member of any such advisory body may, on giving notice in writing to the chairman of that body, send a substitute to any meeting of the body.

(8) A member of such an advisory body shall hold office for the period of three years from the date of this appointment and at the end of that period shall be eligible for reappointment.

(9) A member of such an advisory body may resign his office at any time by notice in writing given to the chairman of the Authority.

PART 3

Management of the Undertaking

Limits of jurisdiction

15.—(1) The limits within which the Authority shall continue to exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹¹⁾, and within which the powers of the harbourmaster may be exercised, shall extend over the following area—

- (a) the harbour land; and
- (b) the area which is shown coloured blue on the harbour map, being the area described in Schedule 3 to this Order.

(2) In the event of any discrepancy between the area described in Schedule 3 and the limits shown on the harbour map, the limits described in the said Schedule shall be deemed to be correct and shall prevail.

(3) Copies of the harbour map certified by the general manager to be true shall be receivable in all civil or criminal proceedings and elsewhere as evidence of the contents of the harbour map.

(4) Any area which falls outside the area described in paragraph (1) and which was immediately before this Order came into force part of the Commissioners' harbour undertaking shall cease to form part of the undertaking and, in respect of that area—

- (a) the Authority shall not exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and
- (b) the powers of the harbourmaster shall not be exercisable.

General powers of Authority in respect of harbour

16.—(1) Subject to this Order, the Authority may take such steps as they consider necessary for the improvement, maintenance and management of the harbour and the accommodation and facilities (including navigational and recreational facilities) provided at or in connection with the harbour.

(2) For those purposes, and without prejudice to the generality of paragraph (1), the Authority may—

- (a) improve, maintain, regulate, manage, mark, sluice and light the harbour and provide harbour facilities in it;
- (b) subject to obtaining the necessary rights in or over land—
 - (i) execute and place in and over the harbour such structures, works and equipment as are required; and

(11) 1964 c. 40.

- (ii) operate, maintain, renew, alter, replace, relay, extend, demolish and reconstruct structures, works and equipment in the harbour (including those placed pursuant to paragraph (i)); and
- (c) do all other things which in their opinion are expedient to facilitate the operation, improvement or development of the undertaking.

PART 4

Further Powers as to Management and Regulation of Harbour

Aids to navigation

17.—(1) In addition to their powers under section 201 of the Merchant Shipping Act 1995⁽¹²⁾ (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the Authority may erect or place, alter, discontinue or remove aids to navigation in any place adjacent to the harbour.

(2) The Authority shall not exercise the powers of paragraph (1) without the approval of Trinity House.

Removal of obstructions other than vessels

18.—(1) The Authority may remove anything, other than the whole or part of a vessel or anything contained in the whole or part of a vessel, which is causing or likely to become an obstruction to, or cause interference with, navigation in any part of the harbour or any approach thereto and may take such steps as appear to them to be appropriate to prevent or minimise such obstruction or interference.

(2) If anything removed by the Authority under paragraph (1) is known by the Authority to be, or is so marked as to be readily identifiable as the property of any person, the Authority 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 Authority possession may be retaken at a place named in the notice within the period specified in the notice (being not less than 28 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 Authority.

(3) Notwithstanding paragraph (2) the Authority may, at such time and in such manner as they think fit, dispose of anything removed under paragraph (1) which is not known or so marked as to be readily identifiable as the property of any person or which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

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

- (a) shall be paid to any person who within three months from the time of disposal proves to the reasonable satisfaction of the Authority that he was its owner at that time; or
- (b) if within the said period no person proves his ownership at the said time, shall vest in the Authority.

(5) If the proceeds of sale of anything removed under this article are insufficient to reimburse the Authority for the said expenses, or there is no sale because the thing is unsaleable, the Authority 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 Authority or who was the owner at the time of its abandonment or loss.

(12) 1995 c. 21.

As to use of harbour

19.—(1) The Authority may from time to time set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Authority may think fit.

(2) Except in an emergency, no person or vessel shall make use of any part of the harbour so set apart or appropriated without the consent of the harbourmaster or other duly authorised officer of the Authority; and—

- (a) the harbourmaster or, as the case may be, such officer, may order any person or vessel making use of the part of the harbour in question without such consent to leave or be removed; and
- (b) the provisions of section 58 (powers of harbourmaster as to mooring of vessels in harbour) of the 1847 Act shall extend and apply in relation to any such vessel subject to the following modifications—
 - (i) the words “moor, unmoor, place” are left out, and
 - (ii) for the word “directions” there is substituted the word “order”.

Moorings

20.—(1) The Authority may provide, place, lay down, maintain, renew, use, have and remove moorings within the harbour—

- (a) on land owned or leased by them or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour,

as they consider necessary or desirable for the convenience of vessels.

(2) The Authority may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by them such reasonable charges as they may from time to time prescribe.

(3) The Authority may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Authority may give notice in writing to the person having control of any vessel using any mooring in the harbour at the date this Order comes into force requiring him within 28 days to remove the vessel so as to enable the Authority to provide, place, lay down, maintain, renew, and remove moorings in accordance with paragraph (1).

(5) The Authority shall offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by them under paragraph (1) as soon as such mooring has been provided, placed, laid down, maintained or renewed as appropriate.

(6) If any person fails to comply with a notice given by the Authority under this article, the Authority may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(7) The Authority may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, renew, use and have existing and future moorings, for vessels in the harbour.

(8) Nothing in any such licence shall entitle a person to place, lay down, maintain, renew or use and have any mooring on land not owned or leased by him or the Authority or in which he has no appropriate interest.

(9) Any such licence shall be valid only for a period of one year commencing with the date on which it is granted.

(10) The Authority may charge for such a licence.

(11) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Authority in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part of the harbour;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Authority under this article; or
- (d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Authority under this article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) If any such person commits an offence under paragraph 11(d), the Authority may remove the mooring in question and recover from that person the expenses incurred in doing so.

(13) In this article “mooring” includes any buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience used for the mooring of vessels.

Repair of landing places, etc.

21.—(1) In this article, “relevant feature” means any landing place, jetty, embankment, structure or other work in the harbour or on land immediately adjoining the waters of the harbour other than one under the control or management of the Authority.

(2) The Authority may by written notice require the owner or occupier of a relevant feature which in the opinion of the Authority is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbour; or
- (b) a hindrance to the navigation of the harbour,

to remedy its condition to the Authority’s satisfaction within a reasonable time (not being less than 21 days) specified in the notice.

(3) If a person to whom notice is given under this article fails without reasonable excuse to comply with the notice within the time stated in the notice or such other time as the magistrates’ court on an appeal may allow—

- (a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) the Authority may carry out the work required by the notice and may recover the expenses of so doing from the person on whom the notice was served.

(4) A notice under this article shall have annexed to it a copy of this article.

(5) A person aggrieved by a notice served by the Authority under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal against the notice to a magistrates’ court acting for the area in which the feature is situated.

(6) An appeal under paragraph (5) shall be made by notice in writing stating the grounds of the appeal.

(7) A person who appeals under paragraph (5) shall send to the Authority notice of his appeal.

(8) On an appeal under paragraph (5), the court may make such order as it thinks fit, such order to be limited to the subject matter of the appeal.

Power to grant permits in respect of certain pleasure craft

22.—(1) The Authority may grant upon such terms and conditions as they think fit permits to the persons in charge of or navigating pleasure craft used for carrying paying passengers within the harbour, and may charge for such permit a reasonable fee in respect of the administrative expenses of processing the application for the permit.

(2) Any such permit may be granted for such period as the Authority may think fit, and may be suspended or revoked by the Authority; but the existence of the power to suspend or revoke the permit shall be specifically mentioned in the permit itself.

(3) In deciding whether to grant, suspend or revoke any permit pursuant to paragraphs (1) and (2), the Authority shall only have regard to the interests of safe navigation within the harbour.

(4) Except with the written permission of the Authority no person shall carry, or permit to be carried, paying passengers in a pleasure craft unless—

- (a) the person in charge of it and any other person navigating it have been granted a permit under this article;
- (b) the conditions of the permit are complied with; and
- (c) the permit is not suspended.

(5) Any person who contravenes or otherwise fails to comply with paragraph (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Any person aggrieved by the withholding, suspension, or revocation of any permit under this article may within 21 days from the date on which the Authority notify the applicant of their decision appeal to a magistrates' court acting for the area in which the harbour is situated.

(7) An appeal under paragraph (6) shall be made by notice in writing stating the grounds of the appeal.

(8) The appellant shall send to the Authority a copy of the notice of his appeal.

(9) On an appeal under paragraph (6), the court may make such order as it thinks fit, such order to be limited to the subject matter of the appeal.

(10) In this article, “pleasure craft” means any vessel which has a passenger certificate issued by the Secretary of State pursuant to regulations under section 85 and 86 of the Merchant Shipping Act 1995⁽¹³⁾ or which is licensed by the Borough Council under section 94 of the Public Health Acts Amendment Act 1907⁽¹⁴⁾.

Power to dredge

23.—(1) The Authority, as may appear to them to be necessary or desirable for the purposes of the undertaking, may deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the harbour and the approaches to it, may blast any rock in that area, and may use, appropriate or dispose of the materials (other than wreck within the meaning of Part XI of the Merchant Shipping Act 1995) dredged by them.

(2) No materials so dredged shall be laid down or deposited—

- (a) in contravention 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.

⁽¹³⁾ 1995 c. 21.

⁽¹⁴⁾ 1907 c. 53.

Authority may provide dredgers, tugs, etc.

24.—(1) The Authority may from time to time purchase, charter, lease, contract for or hire and may maintain and use dredgers, tugs, hoppers, barges or other powered craft—

- (a) as may be necessary or expedient for or in relation to any of the purposes mentioned in article 23; and
- (b) for the use and accommodation of vessels within the harbour, and for this purpose they may let such craft.

(2) In addition to the said purposes the Authority may purchase, charter, lease, contract for or hire, provide and may maintain and use all such dredging and other machines, engines, craft, machinery and appliances as may be necessary or expedient.

Powers with respect to disposal of wrecks

25.—(1) In its application to the Authority section 252 of the Merchant Shipping Act 1995 (powers of harbour and conservancy authorities in relation to wrecks) shall have effect in relation to the harbour in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3), and to any enactment for the time being in force limiting his liability, the Authority may recover from the owner of any vessel in relation to which they have exercised their powers under the said section 252 any expenses reasonably incurred by them under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Authority a case of emergency, paragraph (2) shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 252, other than the power of lighting and buoying, the Authority have given to the owner of the vessel not less than 48 hours' notice of their intention to do so.

(4) If before the notice expires the Authority receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, he shall be at liberty to do so, and the Authority shall not exercise the power in the said section 252 in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with its disposal with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by the Authority.

(5) Notice under paragraph (3) to the owner of any vessel may be served by the Authority either by delivering it to him or by sending it to him by registered post or the recorded delivery service addressed to him at his last known place of business or abode in the United Kingdom, or, if the owner or any such place of business or abode is not known to the Authority by displaying the notice at the harbour offices, Maryport for the period of its duration.

(6) In this article “owner” in relation to any vessel means the person who was the owner of the vessel at the time of its sinking, stranding or abandoning.

(7) The powers conferred on the Authority by this article shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks within the harbour.

Protection of Crown interests in wrecks

26.—(1) Without prejudice to section 308 of the Merchant Shipping Act 1995 (which relates to the exemption from that Act to vessels belonging to Her Majesty) as modified by any Order in

Council made under section 308 of that Act, the powers conferred on the Authority by section 252 of that Act shall not be exercisable—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of his duty as such;
- (b) in relation to any vessel which is not excluded from the exercise of those powers by virtue of being a vessel belonging to Her Majesty but which, at the time when the vessel was sunk, stranded or abandoned—
 - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
 - (ii) was appropriated to the service of Her Majesty's ships of war under the direction and control of the Secretary of State for Defence.

(2) Paragraph (1)(b) shall not apply if the powers in question are exercised with the consent of the Secretary of State for Defence, which may be given with or without such a direction as is referred to in paragraph (3)(b).

(3) Subject to paragraphs (4) and (5), the Authority shall give notice in writing to the Secretary of State for Defence and to the Secretary of State for Transport of any decision of the Authority to exercise in relation to any vessel any of the powers conferred by the said section 252 other than the power of lighting and buoying and, except in a case which is in the opinion of the Authority a case of emergency, shall not proceed with the exercise of those powers—

- (a) except with the consent of the Secretary of State for Defence and the Secretary of State for Transport before the expiration of a period of fourteen days from the giving of the notice; or
- (b) if before the expiration of the said period there is served on the Authority a direction by the Secretary of State for Defence or the Secretary of State for Transport that those powers shall not be exercised in relation to that vessel.

(4) Where the Authority exercise their powers under section 252 in relation to any vessel referred to in paragraph (1) without the consent and before the expiry of the period mentioned in paragraph (3) (a), they shall not in the exercise of those powers use any explosives.

(5) If, before the expiry of the period referred to in paragraph (3), a direction is served on the Authority, they shall comply with that direction, and they shall not exercise the power of sale conferred by section 252 or the power conferred by paragraph (2) of article 25.

(6) The Authority shall not be required to give notice under paragraph (3) in respect of any vessel in respect of which they have received a consent under paragraph (2), but any direction such as is referred to in paragraph (3)(b) accompanying that consent shall be deemed for the purposes of paragraph (3) and of paragraph (3) of article 25 to have been duly served under paragraph (3)(b).

(7) The prohibition on the use of explosives imposed by paragraph (3) shall not apply to the use for cutting away the superstructure of a vessel or the use of such small explosive charges as may for the time being be approved by the Secretary of State for Transport for the purposes of this paragraph.

(8) Without prejudice to the powers of sale conferred on the Authority by the said section 252, the Authority shall hold and dispose of any wreck within the meaning of Part IX of the said Act of 1995 raised, removed or recovered under that section, and any surplus proceeds of sale within the meaning of that section, in accordance with such directions, if any, as may be given to them by the receiver of wreck; and on exercising the said power of sale in the case of any property the Authority shall discharge any sums payable in respect of that property by way of duties of customs or excise and any sums so discharged shall be deemed to be expenses incurred by the Authority under that section.

(9) Any limitation on the powers of the Authority in relation to any vessel arising by virtue of paragraph (1) or paragraph (3) shall not operate to authorise the exercise in relation to that vessel of the powers conferred on the Trinity House by section 253 of the said Act of 1995.

Power to deal with unseviceable vessels

27.—(1) In addition to the powers conferred on the harbourmaster by section 57 of the 1847 Act and on the Authority by the Merchant Shipping Act 1995 and by this Order the Authority may remove, sell, destroy or otherwise dispose of any vessel laid by or neglected as unseviceable in, or on land adjoining the waters of the harbour.

(2) The Authority may retain out of the proceeds of sale of any such vessel, or any part of them, 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 harbourmaster under section 57 of the 1847 Act, and shall pay the surplus, if any, to the person entitled thereto. If the proceeds of sale are insufficient to reimburse the Authority for the said expenses, or there is no sale, the Authority may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(3) Except in the case of emergency, the Authority shall, before exercising their powers under this article, give 28 clear days' notice in writing of their intention to do so to the owner of the vessel and by advertisement in each of three successive weeks in a local newspaper.

(4) If the owner or his place of business or abode is not known to the Authority or cannot after diligent inquiry be found or is outside the United Kingdom, the notice referred to in paragraph (4) may be given by displaying it at the harbour offices, Maryport for the period of its duration.

General directions to vessels

28.—(1) The Authority may, after consultation with the Chamber of Shipping and the Royal Yachting Association (except in cases of emergency), give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour, including without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) for designating areas, routes, fairways or channels in the harbour and the approaches thereto which vessels are to use, or refrain from using, for movement, mooring or anchorage;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for securing that vessels make use of types of aids to navigation specified in the direction;
- (d) for prohibiting entry into the harbour by a vessel which for any reason would be or be likely to become a danger to other vessels in the harbour, or to persons, property, flora or fauna in the harbour or within the harbour land;
- (e) for requiring the master of a vessel to give to the harbourmaster information relating to the vessel reasonably required by the harbourmaster for the purposes of this paragraph.

(2) Directions given under this article may apply—

- (a) to all vessels or to a class of vessels designated in the direction; or
- (b) to the whole of the harbour, or to a part designated in the direction; or
- (c) at all times or at times designated 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).

(3) The Authority may, after consultation with the Chamber of Shipping and the Royal Yachting Association (which shall not be required in cases of emergency), revoke or amend directions given under this article.

Publication of general directions

29.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall be published by the Authority as soon as practicable—

- (a) Once in a newspaper circulating in the locality of the harbour; and
- (b) Once in Lloyd’s list or some other newspaper specialising in shipping news.

(2) If the notice relates to the giving or amendment of a direction, the notice shall state a place at which copies of the direction may be inspected and bought and its price.

(3) Paragraph (1) shall not apply in the case of an emergency except in a case in which the direction has effect for more than seven days beginning with the day on which the direction is given.

(4) In any emergency in respect of which paragraph (1) does not apply by virtue of paragraph (3), 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 Authority consider appropriate.

Special directions to vessels

30.—(1) The harbourmaster may give a special direction in respect of any vessel anywhere within the harbour for any of the following purposes—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at the harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) prohibiting or restricting the use of fires or lights.

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

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

Failure to comply with directions

31. 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

32.—(1) Without prejudice to any other remedy available to the Authority, if a special direction is not complied with within a reasonable time the harbourmaster 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 harbourmaster 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 Authority from the owner of the vessel.

Master's responsibility in relation to directions

33. 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.

PART 5

Control of Works and Dredging in the Harbour

Restriction of works and dredging

34.—(1) Subject to paragraph (4), no person other than the Authority shall—

- (a) construct, alter, renew or extend any work; or
- (b) dredge,

on, under or over tidal waters or land below the level of high water in the harbour unless he is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence.

(2) No person other than the Authority shall do any of the things mentioned in paragraphs (1) (a) and (b) 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 36 or, as the case may require, article 37.

(3) The Authority 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 of it to its former condition; and if he fails to comply with the notice, the Authority may carry out the works so required and may 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; or
- (b) any operations or works of a statutory undertaker.

(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.

Control of certain operations and works of statutory undertakers

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

(2) Subject to paragraph (3), 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 Authority and has supplied the Authority with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker shall inform the Authority 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 Authority to the statutory undertaker, being

directions for the avoidance of danger and the prevention, so far as 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

36.—(1) The Authority may upon such terms and conditions as they think fit grant to any person a licence to construct, alter, renew or extend any works in the harbour on, under or over tidal waters or tidal land below the level of high water, notwithstanding any interference with the public right of navigation or any other public right by such works as constructed, altered, renewed, or extended.

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

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (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 to be taken to enable him to obtain such rights if the licence is granted.

(3) In granting a licence, the Authority may require modifications in the plans, sections and particulars submitted under paragraph (2).

(4) The Authority may require an applicant for a works licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(5) The Authority may require a licensee, being the original grantee or his successor, where works are constructed pursuant to the licence and as a condition of the grant of the licence to pay such reasonable fees in respect of the Authority's administrative expenses and overheads in supervising or inspecting, where necessary, the construction or maintenance of the works.

(6) Where the Authority refuse an application for a works licence, they shall give reasons in writing for their refusal.

(7) Where the Authority grant a works licence upon terms or conditions or require any modification in the plans and particulars, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

(8) If within three months from the receipt of the application under paragraph (2) the Authority do not grant a works licence they shall be deemed to have refused the application.

(9) Articles 39 and 40 shall apply in relation to the holder of a works licence as respects the works which are authorised by the licence as they do in relation to the Authority.

(10) 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 any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus,

without the consent of the statutory undertaker concerned.

Licensing of dredging

37.—(1) The Authority may, upon such terms and conditions as they think fit, grant to any person a licence to dredge in any part of the harbour.

(2) Application for a dredging licence shall be made in writing to the Authority and shall be accompanied by plans, sections and particulars defining the nature, extent and manner of the

operations to be carried out in the exercise of the powers granted by the licence and, in granting any such licence the Authority may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (4) to (8) and (10) of article 36 shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Subject to articles 78 and 80, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995)(15) taken up or collected by means of dredging in pursuance of a dredging licence shall be the property of the holder of the licence and he may use, sell or otherwise dispose of or remove or deposit the materials as he thinks fit.

(5) No materials taken up or collected by means of dredging in pursuance of a dredging licence shall be laid down or deposited—

- (a) in contravention 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.

Appeals in respect of works or dredging licence

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

- (a) a refusal of the application by the Authority;
- (b) any terms or conditions subject to which the licence is granted; or
- (c) any modifications required by the Authority in the plans, sections or particulars submitted by the applicant,

may, within 28 days from the date on which the Authority notify the applicant of their decision or the date on which the Authority are, under article 36(8), deemed to have refused the application, appeal against the decision to a magistrates' court acting for the area in which the licence or proposed licence has or would have effect.

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

(3) The appellant shall send to the Authority a copy of the notice of his appeal.

(4) On an appeal under paragraph (1), the court may make such order as it thinks fit, such order to be limited to the subject matter of the appeal.

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

39.—(1) A tidal work shall not be constructed, altered, replaced, relaid 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, replaced, relaid 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 Authority at their own expense to remove the tidal work or any part of it and restore its site to its former condition; and if on the expiration of a period of 30 days beginning with the date on which the notice is served upon the Authority they shall 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 Authority.

Lights on tidal works during construction

40.—(1) The Authority shall at or near a tidal work during the whole time of its construction, alteration, replacement, relaying or re-construction, 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 may from time to time direct.

(2) If the Authority fail to comply in any respect with a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

41.—(1) In case of injury to or destruction or decay of a tidal work or any part of a tidal work, the Authority shall as soon as is 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 may from time to time direct.

(2) If the Authority 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 guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

42.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing require the Authority at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site 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 vested in the Authority 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 of it, in any notice given under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Authority, 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 him in so doing shall be recoverable from the Authority.

Survey of tidal works

43. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work and any expenditure incurred by the Secretary of State in such a survey and examination shall be a debt due from the Authority to the Crown and shall be recoverable from the Authority.

Permanent lights on tidal works

44.—(1) The Authority shall at the outer extremity of every tidal work 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 may from time to time direct.

(2) If the Authority fail without reasonable excuse to comply in any respect with a direction given under this article they shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 6

Charges

Charges on certain floating articles

45. In addition to their power to demand, take and recover ship, passenger and goods dues under section 26 of the Harbours Act 1964⁽¹⁶⁾ the Authority may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or other floating plant (not being a ship within the meaning of section 57 of that Act) entering, using or leaving the harbour such charges as the Authority think fit, and sections 30 and 31 of that Act (which require lists of charges to be available for inspection and sale; and give a right of objection to ship, passenger and goods dues) shall, with any necessary modifications, apply to the charges authorised by this article as they apply to ship, passenger and goods dues.

Charges for services or facilities

46. In addition to their power to demand, take and recover ship, passenger and goods dues under section 26 of the Harbours Act 1964 the Authority 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

47.—(1) A charge which the Authority 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 Authority may from time to time specify in their published list of charges.

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

(3) Where charges payable to the Authority may be recovered by them from more than one person, the persons from whom they may be recovered shall be jointly and severally liable.

Compounding arrangements and rebates

48. Nothing in section 30 of the Harbours Act 1964 shall require the Authority to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Deposit for charges

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

(16) 1964 c. 40.

Liens for charges

50.—(1) A person who by agreement with the Authority collects charges on their behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect of them.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Authority give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Recovery of charges

51. In addition to any other remedy given by this Order or by the 1847 Act as incorporated with this Order (and, in a case where the master of a vessel in respect of which a charge is payable to the Authority refuses or neglects to pay that charge or any part of it, whether or not an official or agent of the Authority has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Authority may recover any dues, rates, rents or other charges payable to them as a debt in any court of competent jurisdiction.

Harbourmaster may prevent sailing of vessels

52. The harbourmaster may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to him of the payment of any charges payable in respect of the vessel, its passengers or the goods transported on it.

Refusal to pay charges for landing place

53. An officer of the Authority may prevent a vessel from using a landing place provided by the Authority, if the master of the vessel refuses to pay the charges for such use.

Payment of charges on warehoused goods

54. Notwithstanding article 47, the owner or person having the charge of any goods warehoused, placed, stored or yarded in a warehouse, transit shed or area, store or yard of the Authority shall, before the removal of any of the goods from there and at such date or dates as shall be fixed by the Authority, pay such charges as shall be then due and payable on the goods.

Exemptions from charges

55.—(1) Except insofar as may be agreed between the Authority and the person concerned the Authority shall not be entitled to demand harbour dues from, or in respect of—

- (a) a vessel—
 - (i) in the service of the Commissioners of Customs and Excise and not carrying goods for reward;
 - (ii) belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service;
 - (iii) in the service of a police force or other emergency service;
- (b) the Commissioners of Customs and Excise or any officer or other person employed in their service in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, those Commissioners;
- (c) an officer of the Commissioners of Customs and Excise or any other person employed in their service;

- (d) a person employed by the Secretary of State for Defence while in the execution of his duty.
- (2) Officers of the Department for Transport in the execution of their duty shall at all times be exempt from harbour dues.
- (3) In this article, “harbour dues” means ship, passenger and goods dues which the Authority may demand under section 26 of the Harbours Act 1964⁽¹⁷⁾.

PART 7

Byelaws

General byelaws

56.—(1) The Authority may make, in relation to the harbour, byelaws for all or any of the following purposes—

- (a) regulating the use of any works and facilities provided by the Authority;
- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;
- (c) regulating the conduct of persons in the harbour, not being members of a police force or fire brigade or officers or servants of the Crown whilst in the exercise of their duties as such;
- (d) regulating the placing, maintenance and use of moorings within the harbour;
- (e) preventing or removing obstructions or impediments within the harbour or in or near the seaward approaches to the harbour;
- (f) regulating the launching of vessels within the harbour and the use of slipways and landing places;
- (g) regulating or prohibiting the lighting in the harbour or on board any vessel in it of fires, lights, tobacco or any other substances, equipment, tools or appliances which the Authority consider involve a risk of fire, explosion or chemical reaction;
- (h) prohibiting the use, or regulating the movement, speed and parking, of vehicles on harbour land;
- (i) requiring the use of silencers or other similar apparatus, and the control of noise generally in the harbour;
- (j) regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, prescribing rules for 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;
- (k) regulating the embarkation of persons on, or their disembarkation from, vessels within the harbour;
- (l) prescribing the lights and signals to be made—
 - (i) by vessels aground within the harbour;
 - (ii) by vessels or other devices used for marking obstructions within the harbour;
 - (iii) at the entrance to any pier or other work for assisting navigation or mooring within the harbour;
- (m) prohibiting or regulating the discharge into the harbour of any material or substance;

(17) 1964 c. 40.

- (n) regulating or prohibiting 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 or from any vessel within the harbour;
 - (o) regulating or prohibiting bathing, and for securing the protection of bathers, within the harbour;
 - (p) regulating or prohibiting the use of vehicles by persons on the foreshore within the harbour;
 - (q) regulating the berthing and anchoring of vessels in any part of the harbour and regulating or prohibiting the careening or beaching and keeping of vessels in the harbour;
 - (r) regulating or prohibiting the activities within the harbour of divers, surfers, underwater swimmers, water skiers and other persons engaged in similar recreational pursuits;
 - (s) regulating the disposal of any waste matter;
 - (t) regulating the use of personal water craft within the harbour;
 - (u) regulating the holding of regattas and other public events so far as within the harbour;
 - (v) preventing nuisances in the harbour;
 - (w) regulating the exercise of the powers vested in the harbourmaster.
- (2) In this article—
- (a) “signals” includes sound signals; and
 - (b) “divers” and “underwater swimmers” do not include persons carrying out repairs on or maintenance of any vessels moored in the harbour.
- (3) Byelaws made under this article may—
- (a) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles; and
 - (b) relate to the whole of the harbour or to any part of it.
- (4) Byelaws made under this article may provide for the imposition on any person offending against any byelaw of a fine on summary conviction not exceeding level 4 on the standard scale.

Procedure for byelaws

57.—(1) Section 236(3) to (8) and section 238 of the Local Government Act 1972(**18**) apply to all byelaws made by the Authority under this Order and those provisions so applied have effect subject to the modification that for references to a local authority there are substituted references to the Authority.

(2) In its application to byelaws made by the Authority under this Order section 236(7) shall, subject to paragraph (3), be construed as if the words “with or without modifications” were inserted after the word “confirm” in the second place where that word occurs.

(3) The confirming authority for the purposes of section 236 in its application to byelaws made under this Order shall be the Secretary of State.

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

- (a) he shall inform the Authority and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification; and
- (b) he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Authority and by any other persons who have, or are likely to have, been informed of it.

PART 8

Finance

General borrowing powers

58.—(1) Subject to paragraphs (2) and (3), the Authority may borrow monies upon the security of their assets for the time being or of their revenues or both their assets and their revenues, by any methods they see fit.

(2) The Authority’s borrowing shall not exceed one million pounds (or that sum as adjusted in accordance with article 60) without the consent of the Secretary of State.

(3) For the purpose of paragraph (2), in calculating the amount of monies borrowed by the Authority and outstanding at any one time there shall be excluded any monies which were borrowed for the repayment, within twelve months of the date of their borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(4) Monies borrowed by the Authority under this article shall be applied only to purposes to which capital money is properly applicable.

(5) For the purposes of paragraph (4), but without prejudice to its generality, purposes to which capital money is properly applicable shall be deemed to include—

- (a) the payment of any interest falling due within the five years immediately following the date of the borrowing of any sum of money borrowed by the Authority under this article; and
- (b) the repayment within twelve months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

Temporary borrowing

59.—(1) The Authority may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Authority may require for meeting their obligations or discharging their functions under or in pursuance of any enactment.

(2) The total amount outstanding at any one time of the money so borrowed shall not exceed £300,000.

RPI adjustment of borrowing limits

60.—(1) On each anniversary of the new constitution date the sums mentioned in articles 58(2) and 59(2) shall be adjusted in line with any movement (calculated to one decimal place) in RPI which occurred during the year ended on 31st December immediately preceding the anniversary in question.

(2) Any adjustment referred to in paragraph (1) shall be recorded in the next following annual statement of accounts prepared by the Authority.

(3) In paragraph (1), “RPI” means the general index of retail prices for all items published in the monthly publication of the Office for National Statistics known as “Monthly Digest of Statistics”, or any successor from time to time of that index.

Existing borrowing and harbour stock

61.—(1) Subject to paragraph (2), any sums of money borrowed by the Authority under or by virtue of the repealed enactments and outstanding on the date when this Order comes into force shall be deemed for the purposes of article 58 to have been borrowed under that article.

(2) The Authority may purchase any harbour stock, whether at par or at a price above or below par, either in the market or by agreement with its holder for the purpose of extinguishing that stock.

(3) In this article “harbour stock” means the harbour stock held under the Maryport Harbour Act 1939(19).

Application of harbour revenue

62. Section 17 (application of harbour revenue) of the Maryport Harbour Act 1939 is amended by the insertion after paragraph (5) of—

“(6) The payment of capital and interest in respect of any borrowing under article 58 or 59 of the Maryport Harbour Revision Order 2007;”.

Audit of accounts

63.—(1) The accounts of the Authority shall be audited annually by an auditor or firm of accountants appointed by the Authority.

(2) The report of the auditor on the accounts of the Authority for each financial year shall be submitted to a meeting of the Authority as soon as reasonably practicable following end of the year of account.

Publication of annual statements

64. As soon as reasonably practicable after each annual statement of accounts is prepared, the Authority shall make a copy of the statement available free of charge at the offices of the Authority for a period of three months for inspection by members of the public and shall, subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests one.

PART 9

Miscellaneous

Indemnity insurance for Members

65. The Authority may subscribe, and pay premiums, for a policy of insurance to indemnify the Members jointly or severally against personal liability arising from any act or omission of the Members or of any of them, not being an act or omission which the Member or Members in question knew to be a breach of his or their duty or concerning which he or they were reckless as to whether it was such a breach.

General manager of Authority

66. The clerk of the Commissioners shall on and after the new constitution date be known as the general manager of the Authority and references to the clerk in any enactment or document applicable to the Authority shall be construed accordingly.

Power to grant tenancies and to dispose of land

67.—(1) The Authority may grant licences, tenancies and leases for any term of land within the harbour so far as they consider desirable in the interests of efficient and economical management of the harbour.

(2) The Authority may also dispose of any interest in land within the harbour which they consider to be surplus to that required by them for the purposes of the undertaking.

Development, etc., of land

68.—(1) The Authority may form and promote, or join with any other person in forming and promoting, a company for using or developing for any purpose, or carrying on any trade or business on, any of the harbour land.

(2) The Authority may (alone or with others) develop land not required for the purposes of the undertaking with a view to disposing of the land or interests in it, and may acquire land by agreement for the purpose of developing it with such land.

Local inquiries

69. The Secretary of State may cause to be held such inquiries as he may consider necessary in regard to the exercise of any powers or duties conferred or imposed upon him and the giving of any consent or approval under this Order, and subsections (2) to (5) of section 250 of the Local Government Act 1972(20) shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Authority were a local authority.

Defence of due diligence

70.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it shall be a defence for the defendant to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 22(5);
- (b) article 40;
- (c) article 41; and
- (d) article 44.

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the defendant shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, the defendant has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in the defendant's possession.

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

71.—(1) Without prejudice to article 19, the Authority may designate any part of the harbour for the loading and unloading of any goods to which this article applies.

(2) Without prejudice to any defence which the Authority may have against any claimant in any proceedings, where pursuant to paragraph (1) the Authority have designated a place for the loading or unloading of goods of any description—

- (a) the harbourmaster 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

(20) 1972 c. 70; subsection (2) has been amended by the Statute Law (Repeals) Act 1989 (c. 43), section 1(1) and Schedule 1, Part IV; subsection (3) by the Criminal Justice Act 1982 (c. 48), Sections 38 and 46; and subsection (4) by the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, Part III.

- (b) if any person disobeys any such direction, the Authority 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) This article applies to—
 - (a) goods in bulk, and
 - (b) goods the nature or character of which is such as, in the opinion of the Authority—
 - (i) to give rise to special risk of contamination, taint, stain, injury or danger to other goods, or to persons, property or water, or
 - (ii) to necessitate the provision of special facilities for their handling or for the safety, protection, welfare or accommodation of persons employed in, or in connection with, such handling.
- (4) This article does not apply to fish or fishing tackle.

Liability for safety of goods

72. The Authority shall not be responsible for the safekeeping of goods deposited on any part of the harbour land not specifically set apart by the Authority for the purpose of warehousing.

Boarding of vessels

73. A duly authorised officer of the Authority may, on producing his authority if so required, enter and inspect a vessel in the harbour for the purposes of any enactment relating to the harbour or of any byelaw of the Authority relating to the harbour, including the enforcement of any such enactment or byelaw.

Power to remove goods

74.—(1) If any goods are left on or in any part of the harbour land the Authority may require the owner of the goods to remove them.

(2) If such goods are not removed within six hours after such requirement or, in any case where it is not reasonably practicable to contact the owner of the goods, within six hours after leaving a notice on the goods requiring their removal, the Authority may cause them to be removed to their own or any other public warehouse or store.

(3) Such removal shall be carried out at the expense and risk of the owner.

(4) Notwithstanding such removal on behalf of the Authority the goods shall be liable to a lien for the cost of the removal, and for any charges payable to the Authority by the owner in respect of the goods.

Power to provide parking places

75. The Authority may—

- (a) provide facilities (including shelters) within the harbour for the parking of vehicles,
- (b) for that purpose erect barricades or fencing with relative offices, waiting rooms and other conveniences, and
- (c) make reasonable charges for the use of such facilities.

Removal of vehicles, etc.

76.—(1) If a vehicle or vessel is left without the permission of the Authority—

- (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 or vessels is prohibited by notice erected by the Authority,

the Authority may remove the vehicle or vessel or cause it to be removed.

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

(3) Where, under paragraph (1), the Authority remove a vehicle or vessel or cause it to be removed they shall as soon as practicable inform the police.

(4) The expense of and incidental to the removal of a vehicle or vessel under this article shall be recoverable by the Authority from any person responsible as a debt in any court of competent jurisdiction.

(5) For the purposes of paragraph (3), “person responsible” has the same meaning as in section 102(8) of the Road Traffic Regulation Act 1984(21).

(6) If, under paragraph (1), the Authority 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 by whom the vehicle is 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) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour.

(8) In determining, for the purposes of this article, who was the person by whom the vehicle was kept at any time, it shall be presumed that person was the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994(22).

Obstruction of officers

77.—(1) Any person who—

- (a) intentionally obstructs the harbourmaster, his authorised deputies or his assistants acting in pursuance of this Order; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such a person,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who in giving such information makes a statement which he knows to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Crown rights

78.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the Authority to take use, enter upon, or in any manner interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) 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; or

(21) 1984 c. 27.

(22) 1994 c. 22.

(b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) Consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

For the protection of the Environment Agency

79. Schedule 4 shall have effect.

Saving for Trinity House

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

Saving for Lord of the Manor

81. Nothing in this Order shall prejudice or derogate from any of the rights, privileges or powers of the Lord or Lady of the Manor of Ellenborough.

Repeals

82.—(1) The enactments specified in columns (1) and (2) of Schedule 5 to this Order are repealed to the extent mentioned in column (3) of that Schedule.

(2) Notwithstanding the repeal of enactments by this Order the Authority may continue and maintain the existing works.

Signed by authority of the Secretary of State for Transport

6th December 2007

Richard Bennett
Head of Ports Division
Department for Transport

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SCHEDULES

SCHEDULE 1

Article 10

FORM OF DECLARATION BY MEMBERS

MARYPORT HARBOUR AUTHORITY

MARYPORT HARBOUR ACTS AND ORDERS 1866 to 2007

DECLARATION

I, [FULL NAME] do solemnly declare—

(1) that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a Member of the Maryport Harbour Authority by virtue of the Maryport Harbour Acts and Orders 1866 to 2007;

(2) that I have read and understood the notes entitled “Notes for Guidance of the Authority on the Disclosure of Financial and Other Interests” and “Duties of the Authority “ and that I will comply with the requirements as to the disclosure of such interests, laid down by subparagraph (6) of paragraph 7 of Schedule 2 to the Maryport Harbour Revision Order 2007, and in particular that:

- (a) I have disclosed to the general manager details of every financial or other interest such as is mentioned in those notes;
- (b) I will in future notify the general manager of any alteration in those interests, or any new interest, such as is mentioned in those notes, which I may acquire.

Made and signed in Maryport, in the)
 County of Cumbria, on the)
 day of) (signature)

Witnessed by the general manager on the)
 day of)
) (signature)
 as a Member of the Maryport Harbour)
 Authority)

Note:—Where the declaration is to be made by the general manager, the Form shall be amended so that, for references to “the general manager”, there are substituted references to “the chairman”.

SCHEDULE 2

Article 13

PROVISIONS APPLYING TO THE MEMBERS

Meetings of Authority

1.—(1) The first meeting of the Authority on or after the new constitution date shall be convened by the general manager as soon as reasonably possible after that date and the general manager shall send notice of that meeting by post to each of the Members.

(2) The Authority shall meet at least six times in each year.

Chairman and vice-chairman of Authority

2.—(1) There shall be a chairman of the Authority who shall be appointed by the Members from among the members holding office under article 5(1)(a) to (d) or 12 of this Order.

(2) The first chairman taking office after the new constitution date shall be appointed at the first meeting of the Authority referred to in paragraph 1 and shall, unless he resigns his office as chairman or ceases to be a Member, continue in office as chairman until his initial term of office as a Member has expired.

(3) Subject to sub-paragraph (7), every chairman subsequently appointed under sub-paragraph (1) shall, unless he resigns his office as chairman or ceases to be a Member, hold office for a period of three years.

(4) There shall be a vice-chairman of the Authority who shall be appointed by the Members from among the Members holding office under article 5(1)(a) to (d) or 12 of this Order.

(5) The first vice-chairman taking office after the new constitution date shall be appointed as soon as practicable after the new constitution date and shall, unless he resigns his office as vice-chairman or ceases to be a Member, continue in office as vice-chairman until his term of office as a Member has expired.

(6) Subject to sub-paragraph (7), every vice-chairman subsequently appointed under sub-paragraph (4) shall, unless he resigns his office as vice-chairman or ceases to be a Member, hold office for a period of 3 years.

(7) If those of the Members who are appointed under article 5(1)(a) to (d) or 12 of this Order are satisfied that the chairman or vice-chairman should cease to hold his office as such, they may terminate his office as such and appoint another Member to be chairman or vice-chairman during the remainder of the term for which the former chairman or vice-chairman was appointed.

(8) On a casual vacancy occurring in the office of chairman or vice-chairman of the Authority, the vacancy shall be filled by the Members at a meeting held as soon as practicable after the vacancy occurs.

(9) A Member appointed under sub-paragraph (8) to fill a casual vacancy in the office of chairman or vice-chairman shall, unless he resigns that office or ceases to be a member, hold that office during the remainder of the term for which the chairman or vice-chairman whom he replaces was appointed.

(10) In the absence of the chairman the person for the time being holding office as vice-chairman shall have and may exercise all the powers of the chairman.

(11) If at a meeting of the Authority neither the chairman nor the vice-chairman is present the Members present shall choose one of their number to be chairman of the meeting.

Vacation of office by Members

3. A Member (other than the general manager) may resign his office at any time by notice in writing given to the chairman of the Authority or if that Member is the chairman, the vice-chairman.

Reappointment of Members

4.—(1) Subject to this Schedule, a vacating appointed Member shall be eligible for reappointment as a Member unless he has been disqualified from office under paragraph 9.

(2) Subject to sub-paragraph (3), a vacating appointed Member shall not be eligible for reappointment as a Member where he has held office for three consecutive terms.

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(3) A Chairman of the Authority may hold office for not more than three consecutive terms as chairman notwithstanding that he may have previously held office as a Member for up to three consecutive terms immediately preceding his appointment as chairman.

(4) For the purposes of this paragraph, “term” does not include—

- (a) a term referred to in article 7(a) or (b) of this Order;
- (b) the remainder of a term during which the Member was appointed to fill a casual vacancy under article 12 of this Order; or
- (c) any term served by the Member prior to the new constitution date.

(5) In this paragraph “appointed Member” means a Member appointed under article 5(1) of this Order.

Reappointment of chairman

5.—(1) A chairman of the Authority shall not be eligible for reappointment as chairman where, immediately before his appointment, he has served as chairman for three consecutive terms.

(2) For the purposes of this paragraph, “term” does not include—

- (a) a term served by the Member as chairman under paragraph 2 where that term is less than 3 years;
- (b) the remainder of a term during which the Member was appointed to fill a casual vacancy in the office of chairman under paragraph 2; or
- (c) any term served by the Member as chairman prior to the new constitution date.

Committees

6. The Authority may, subject to such conditions as they think fit, delegate to a committee of the Authority any of their functions.

Proceedings of Members and Committees

7.—(1) Every question at a meeting of the Authority or a committee of the Authority shall be decided by a majority vote of the Members present and voting.

(2) If at any meeting of the Authority there is an equality of votes on a question, the chairman of the meeting shall have a second or casting vote.

(3) The quorum required for a meeting of the Authority shall be four.

(4) The Authority shall cause minutes to be made—

- (a) of the names of Members present at every meeting of the Authority or of a committee of the Authority; and
- (b) of all proceedings or resolutions at such meeting;

and such minutes, if signed by a person purporting to be chairman of the meeting to which the minutes relate or of a subsequent meeting at which the minutes were approved as a correct record, shall be received in evidence without further proof.

(5) Until the contrary is proved, a meeting for which minutes have been so made or signed shall be deemed to have been duly convened and held and, if it was a meeting of a committee, that committee shall be deemed to have had power to deal with the subject of the minutes.

(6) If a Member—

- (a) has any interest, direct or indirect—

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- (i) in any contract or proposed contract to which the Authority are or would be a party,
 - (ii) in any other matter with which the Authority are concerned, or
- (b) is a director of a company or body with which the contract or proposed contract is made or proposed to be made,
- he shall declare that interest or directorship.

(7) If a Member is present at a meeting of the Authority or of any committee of the Authority at which a contract or other matter in which he has an interest is to be considered, he shall—

- (a) as soon as is practicable after the commencement of that meeting, disclose his interest;
 - (b) not vote on any question with respect to that contract or matter; and
 - (c) withdraw from the meeting—
 - (i) at any time if the Members present by resolution require him to do so; and
 - (ii) while a decision on that contract or matter is being made.
- (8) This paragraph shall not apply to any interest—
- (a) which a Member has in respect of the payment to the Authority of harbour dues;
 - (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
 - (c) which a Member has as an employer of a public utility undertaking or as a shareholder, not being a director of a company, unless he possesses more than five per cent of the issued share capital of the company; or
 - (d) which the Members present at the meeting by resolution declare to be too remote.

Validity of acts of Authority

8. The Authority may act notwithstanding a vacancy among the members and no act of the Authority or of any committee of the Authority shall be deemed to be invalid by reason of any irregularity in the appointment of a Member or of the chairman or vice-chairman.

Disqualification of Member

9. If the Authority are satisfied that a Member—
- (a) has become bankrupt or made an arrangement with his creditors; or
 - (b) has, for a period of four consecutive months, been absent from meetings of the Authority otherwise than by reason of illness or some other cause approved during that period by the Authority; or
 - (c) is incapacitated by physical or mental illness from discharging the functions of a Member; or
 - (d) is otherwise unable, unwilling or unfit to discharge the functions of a Member,

the Authority may declare his office as a Member to be vacant and on the date of that declaration his office shall become vacant.

Authentication of seal

10.—(1) The application of the seal of the Authority shall be authenticated by the signature of the chairman of the Authority or some other Member authorised by the Authority to authenticate

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the application of the seal, and of the general manager or some person authorised by the Authority to act in his place in that behalf.

(2) The Authority may authorise a person to act instead of the general manager under this paragraph whether or not the general manager is absent or incapable of acting.

Remuneration of Members

11. The Authority may pay to the chairman and other Members such allowances and expenses as the Authority from time to time determine.

General

12. The Authority may appoint upon such terms and conditions as they see fit such officers and servants as they may determine.

13. Subject to this Schedule, the procedure of the Authority shall be regulated in such manner as the Authority determine.

SCHEDULE 3

Article 15

HARBOUR LIMITS

1. The area referred to in Article 15(1)(b) of this Order is—
 - (a) so much of the area as is bounded—
 - (i) to the west and north by an imaginary line commencing at Point A and thence in a straight line to point B and thence in a straight line to Point C and thence in a north easterly direction to Ordnance Survey grid reference NX302993.506 NY536915.332 and thence in a south easterly direction to reference NX303161.311 NY436835.197 and thence in an east north easterly direction to reference NX303402.87 NY536850.286 and thence in a south westerly direction terminating at Point E; and
 - (ii) to the south and east by an imaginary line commencing at point A and thence in a straight line to Point D and thence along the northern western edge of the existing pier wall to Ordnance Survey grid reference NX302785 .4 NY536913.2 and thence in a south-easterly direction along the northern edge of the existing pier wall to the commencement of the pier at reference NX302925.9 NY536847.6 and thence along the level of high-water mark of ordinary spring tides, including all basins and docks, bays, creeks, pools and inlets as far as the tide flows, including so much of the River Ellen as is downstream from an imaginary line drawn across the river between Ordnance Survey grid references NX303382.35 NY536416.36 and NX303398.5 NY536412.6 terminating at point E; and
 - (b) so much of the area as does not fall within the area described in paragraph (a) lying seaward of the low-water mark of ordinary spring tides within a curve of radius 286.440 metres, with its centre at Ordnance Survey grid reference NX302785 .4 NY536913.2;
 - (c) so much of the area (if any) as lies to the seaward side of the straight line between points B and C and is above the low water mark of ordinary spring tides; and
 - (d) so much of the area lying seaward of the high-water mark of ordinary spring tides as is—
 - (i) within a curve of radius 93.632 metres, with its centre at Ordnance Survey grid reference NX302845.480 NY536485.326; and

- (ii) within a curve of radius 138.546 metres, with its centre at Ordnance Survey grid reference NX302870.686 NY536163.713; and
- (iii) bounded to the north and south by the radii of the curves mentioned in paragraphs (i) and (ii) and to the west by a line commencing on the point on the curve mentioned in paragraph (i) at reference NX302788.266 NY536411.208 thence proceeding in a south south easterly direction to reference NX302790.942 NY536387.996, and thence in a south south westerly direction to the point on the curve mentioned in paragraph (ii) at reference NX302735.703 NY536194.932.

2.—(1) In paragraph 1(a)—

“Point A” is the point where an imaginary line drawn from Point D meets the level of low-water mark of ordinary spring tides, such line continuing in the direction taken by the southern edge of the existing pier on the southern side of the entrance to the harbour;

“Point B” is the point where an imaginary line drawn from Point C meets the level of low-water mark ordinary spring tides, such line being parallel to the imaginary line described in the preceding paragraph;

“Point C” is Ordnance Survey grid reference NX302989.237 NY536905.538;

“Point D” is Ordnance Survey grid reference NX302784.400 NY536909.400 on the southern edge at the seaward end of the existing pier on the southern side of the entrance to the harbour;

“Point E” is Ordnance Survey grid reference NX303382.500 NY536819.900 on the northern edge of the landward end of the existing pier at the north of the harbour.

- (2) Points A to E are all shown on the harbour map for identification purposes.

SCHEDULE 4

Article 79

PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions shall have effect, unless otherwise agreed in writing between the Environment Agency (in this Schedule referred to as “the Agency”) and the Authority.

2. In this Schedule—

“accumulation” means any accumulation of silt or other material;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” have corresponding meanings;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure or appliance constructed or used for land drainage, defence against water (including sea water) or tidal monitoring;

“erosion” means any erosion of the bed or shore of the sea or of the bed or banks of the rivers comprised in the harbour;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“outfall” means—

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- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“protected work” means any work, structure or other apparatus owned or maintained by, or under the control of, the Agency for the purposes of any of its statutory functions;

“specified work” means any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any exploratory geotechnical investigations that may be undertaken); and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers, and the passage through which water flows (whether or not the flow is intermittent) except a public sewer.

3. The powers conferred on the Authority by article 16 shall not apply to a protected work without consent of the Agency (which consent shall not be unreasonably withheld).

4. The Authority shall maintain to the reasonable satisfaction of the Agency any work or structure comprised in the undertaking which is constructed or used for land drainage or defence against water (including sea water).

5. Except in a case of emergency, not less than 28 days before requiring action under article 21 the Authority shall give notice to the Agency of the action intended together with reasonable particulars thereof and shall, in requiring such action, comply with such requirements of the Agency as are notified by the Agency to the Authority within the said 28 days, being requirements reasonably necessary to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for land drainage purposes is not impaired, or requirements reasonably necessary to safeguard other works of the Agency.

6.—(1) Except in a case of emergency, before exercising the powers of articles 18, 25 or 27, the Authority shall consult the Agency and comply with any reasonable requirements which may be made by the Agency within 28 days of being so consulted for preventing pollution of waters in the area.

(2) In a case of emergency, the Authority shall give to the Agency such notice of the exercise (or of the intention to exercise, as the case may be) any of the said powers as is reasonably practicable in the circumstances.

7.—(1) Before beginning to construct any specified work, the Authority shall submit to the Agency plans of the work and such further particulars available to them as the Agency may reasonably require.

(2) Without prejudice to sub-paragraph (1), the Authority shall ensure that any of their contractors shall provide the Agency with all necessary hydraulic information in order to identify and quantify any effects of accumulation or erosion or alteration of the tidal flow or littoral drift which are likely to be caused by any specified work and such information shall be accompanied by an appropriate assessment of that information and of any remedial measures which may be reasonably necessary having regard to any such likely effects.

(3) Any specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency or settled in accordance with paragraph 24.

(4) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld;

- (b) shall be deemed to have been given if it is neither given nor refused in writing (and in the case of refusal, with a statement of the grounds for refusal) within two months of the submission of plans for approval;
 - (c) may be given subject to such reasonable requirements as the Agency may impose for the protection of any drainage work or fishery or water resources, for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties.
- 8.** Without prejudice to the generality of paragraph 7, the requirements which the Agency may impose under that paragraph include—
- (a) conditions as to the time at which and the manner in which any work is to be carried out;
 - (b) conditions requiring the Authority at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to provide compensatory habitat for habitat lost or damaged by the specified works;
 - (iii) to construct such protective works whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments, outfalls and other new works and the strengthening, repair or renewal of existing banks, walls or embankments, outfalls or other works) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;
 - (iv) to monitor accumulation, erosion or alterations of the tidal flow or littoral drift arising during the construction or following the completion of the specified works;
 - (v) to provide, maintain and operate a system of monitoring water quality in the harbour;
 - (vi) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.
- 9.** Any specified work, and all compensatory habitat and protective works required by the Agency under paragraph 7, shall be constructed—
- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved under this Schedule; and
 - (b) to the reasonable satisfaction of the Agency;
- and the Agency shall be entitled by its officers to watch and inspect the construction of such works.
- 10.** The Authority shall give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.
- 11.** If any part of the specified works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with this Schedule, the Agency may by notice in writing to the Authority require the Authority, at the Authority's expense, to comply with this Schedule or (if the Authority so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such an extent and within such limits as the Agency reasonably requires.
- 12.** Subject to paragraph 13, if within a reasonable period, being not less than 28 days from the date when a notice under paragraph 11 is served on the Authority, they have failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards fulfilling those requirements, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Authority.

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13. In the event of any dispute as to whether paragraph 11 is properly applicable to any work in respect of which a notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by paragraph 12 until the dispute has been finally determined.

14.—(1) If, during the construction of a specified work or within 10 years after the completion of such work there is created an accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage, or reasonable expectation of damage, the Authority, if so required by the Agency before or within the period of 10 years after such completion, shall, remedy such accumulation, erosion or alteration of tidal flow or littoral drift, in the manner specified in sub-paragraph (4) and , if they refuse or fail so to do, the Agency may itself cause the work to be done and may recover the reasonable cost thereof from the Authority.

(2) Should any accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage or reasonable expectation of damage, arise in consequence of such construction within the said period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall from time to time be so remedied by the Authority during the said period of 10 years and at any time thereafter, save that the Authority's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years elapses without any further accumulation or erosion or alteration of the tidal flow or littoral drift caused or created in consequence of such construction.

(3) In sub-paragraphs (1) and (2), "damage" means any damage to the bed or banks of a river or any adverse effect upon the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991.

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency.

(5) In the event that surveys, inspection, tests or sampling establish that such accumulation or erosion or alteration of tidal flow or littoral drift would have been caused in any event by factors other than the construction of a specified work the Authority shall be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift only to the extent that the same is attributable to such construction.

15. For the purposes of paragraphs 10 and 14(1) the date of completion of a work shall be the date on which it is brought into use.

16.—(1) Subject to sub-paragraph (2), the Authority shall from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated on land owned by the Authority or which it has control of or is in occupation of for the purposes of or in connection with the construction of the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(2) The obligation imposed on the Authority under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of the Order from doing so.

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(3) If any such work which the Authority is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Authority at the Authority's own expense to repair and restore the work, or any part thereof, or (if the Authority so elects and the Agency consents, such consent not to be unreasonably withheld) to remove the work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Agency reasonably requires.

(4) If, on the expiration of 30 days from the date on which a notice is served upon the Authority it has failed to comply with the requirements of the notice, the Agency may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Authority.

17. If by reason of the construction of any specified work or by reason of the failure of that work or of the Authority to maintain it the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Authority to the reasonable satisfaction of the Agency and, if the Authority fails to do so, the Agency may make good the same and recover from the Authority the expense reasonably incurred by it in so doing.

18.—(1) The Authority shall take all measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work;

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Authority requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Authority fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Authority the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Authority the reasonable cost of so doing provided that notice specifying those steps is served on the Authority as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

19. The Authority shall indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule;
- (c) in the examination of monitoring records provided under this Schedule.

20.—(1) Without prejudice to the other provisions of this Schedule the Authority shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss which may be made or taken against, or recovered from or incurred by, the Agency by reason of the construction of any specified work or by reason of its maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Authority, its contractors, agents, workmen, or servants whilst engaged upon any such work.

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(2) The Agency shall give to the Authority reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Authority which agreement shall not be unreasonably withheld.

21. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (if it was done without neglect or default on behalf of the Agency, of any person in its employ or its contractors or agents) relieve the Authority from any liability under this Schedule.

22. Except as otherwise provided by this Schedule nothing in this Order or the 1986 Act shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligation conferred, arising or imposed under the Land Drainage Act 1991(**23**), the Salmon and Freshwater Fisheries Act 1975(**24**), the Water Resources Act 1991(**25**) or any other enactment, byelaw or regulation relating to the Agency.

23. For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under a main river) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed to constitute a consent under that section.

24.—(1) Unless the parties agree to arbitration any difference arising between the Authority and the Agency under paragraph 8 shall be settled by the Secretary of State for Environment, Food and Rural Affairs on a reference to him by either party after notice in writing to the other.

(2) Subject to sub-paragraph (1) , any difference arising between the Authority and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

25. Paragraphs 7 to 24 shall apply in relation to works or dredging licensed by the Authority under this Order to be carried out by a person other than the Agency, as they apply to a specified work constructed by the Authority; and, accordingly, references in those provisions to the Authority shall be construed as including references to the holder of the relevant licence.

SCHEDULE 5

Article 82

ENACTMENTS REPEALED

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
1866 c.ccxlv	The Maryport Improvement and Harbour Act 1866	In section 4, the definition of “shipowner” Section 8, insofar as it relates to the harbour undertaking Sections 153 to 159

(23) 1991 c. 59.
(24) 1975 c. 51.
(25) 1991 c. 57.

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<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of repeal</i>
		Sections 161 to 168
1868 c.lxx	The Maryport District and Harbour Act 1868	Section 2, insofar as it incorporates provisions of the 1847 Act In section 3, the definitions of “coal owners” and “harbour” Sections 34 to 43, 46 to 57, 59 to 76, 80, 82, 84 Schedules A to D
1879 c.ci	The Maryport Improvement (Harbour) Act 1879	The whole Act
1882 c.clviii	The Maryport Improvement (Harbour) Act 1882	The whole Act
1884 c.clxxxix	The Maryport Improvement (Harbour) Act 1884	The whole Act
1894 c.cvi	The Maryport Harbour Act 1894	Sections 6 to 44, 48 to 53 and Schedules 2 to 6
1903 c.ccxii	The Maryport Harbour Act 1903	The whole Act
1906 c.xli	The Maryport Railways and Docks Act 1906	The whole Act
1936 c.lxxxii	The Pier and Harbour Order (Maryport) Confirmation Act 1936	The whole Act
1939 c.xii	The Maryport Harbour Act 1939	Sections 15, 19, 20, 21 and 22

EXPLANATORY NOTE

(This note is not part of the Order)

This Order alters the constitution of, and renames as the Maryport Harbour Authority, the Maryport Harbour Commissioners who are the harbour authority for the harbour of Maryport. The Order also repeals various enactments relating to the harbour and replaces them with provisions framed in more modern terms.