
STATUTORY INSTRUMENTS

2010 No. 2020

The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010

PART 5

MISCELLANEOUS AND GENERAL

Works to form part of the undertaking

23.—(1) The works and the bed, banks and shores of the River Severn on which the works are constructed and any lands reclaimed or acquired by the Company for the purpose of the works shall for all purposes form part of the Avonmouth Docks of the Company and of the undertaking.

(2) All enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Company or its officers, and all byelaws for the time being in force in relation to the Avonmouth Docks of the Company and in relation to the undertaking, shall so far as relevant, apply to the works and such bed, banks, shores and lands and may be enforced by the Company accordingly.

(3) Nothing in this Order shall affect the operation within the designated harbour of such of the provisions of the 1847 Act as immediately before the coming into force of this Order were operative within the designated harbour and those provisions shall extend to and apply to the works.

Application of byelaws

24.—(1) The Bristol Port General Byelaws 2005 apply, subject to paragraph (2), to the designated harbour as they applied to the designated harbour immediately before the coming into force of this Order, and nothing in this Order shall affect the right of the Company to enforce the byelaws or to amend or revoke them.

(2) In the Bristol Port General Byelaws 2005 as applied by paragraph (1), references to the “harbour premises” shall be construed so as to include the works.

(3) In this article “the Bristol Port General Byelaws 2005” means the byelaws made by the Company on 25 November 2005 and confirmed by the Secretary of State on 1 December 2005(1).

Power to appropriate

25.—(1) Notwithstanding anything in section 33 (harbour, dock, and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the Company may from time to time set apart or appropriate the whole or any part or parts of the lands, quays, berths, buildings, facilities, machinery or equipment comprised within Works Nos. 1 to 6 or upon which Works Nos. 1 to 6 are constructed and maintained for the exclusive, partial or preferential use and accommodation of any particular trade, person, activity, vessel or goods or any class of trade, person, activity, vessel

(1) A copy of the byelaws may be obtained from The Bristol Port Company at St Andrew’s House, St Andrew’s Road, Avonmouth, Bristol BS11 9DQ.

or goods, subject to the payment of such charges and subject to such terms and conditions and regulations as the Company may think fit.

(2) No person or vessel shall make any use of any lands, quays, berths, buildings, facilities, machinery or equipment set apart or appropriated under this article without the consent of the harbour master or other duly authorised officer of the Company and the harbour master or such officer may order any person or vessel making use of such lands, quays, berths, buildings, facilities, machinery and equipment without such consent to be removed.

(3) The provisions of section 58 (powers of the harbour master as to the mooring of vessels) of the 1847 Act shall extend and apply to any such vessel.

Defence to proceedings in respect of statutory nuisance

26.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(2) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine shall be imposed, under section 82(2) of that Act(3) if the defendant shows—

- (a) that the nuisance relates to premises used by the Company for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works and that the nuisance is attributable to the carrying out of works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974; or
- (b) that the nuisance is a consequence of the construction, maintenance or use of the work and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990); and
- (b) section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded)(4),

shall not apply where the consent relates to the use of premises by the Company for the purposes of, or in connection with, the exercise of the powers conferred by this Order with respect to the construction or maintenance of the works.

Defence of due diligence

27.—(1) In proceedings for an offence under any provision of this Order it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) 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 Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear

(2) 1990 c. 43. Section 82(1) is amended by the Environment Act 1995 (c. 25), section 107 and Schedule 17, paragraph 6.
(3) Section 82(2) is amended by the Noise and Statutory Nuisance Act 1993 (c. 40), section 5 and by the Environment Act 1995, section 107 and Schedule 17, paragraph 6.
(4) Sections 61(9) and 65(8) are amended by the Environment Act 1995 (c. 25), section 120 and Schedule 24 and the Environmental Protection Act 1990 (c. 43) section 162 and Schedule 15, paragraph 15.

days before the hearing, it 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 its possession.

Certification of plans

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