
STATUTORY INSTRUMENTS

2016 No. 151

The Newhaven Harbour Revision Order 2016

PART 4

MISCELLANEOUS AND GENERAL

General functions of the Company

18.—(1) The Company may, subject to the provisions of this Order, take all such steps from time to time as it may consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and the facilities (including recreational facilities) afforded therein or in connection therewith, and in the interests of the conservation of, or prevention of damage to, any part of the harbour where that part has been designated, or otherwise given special protection or status, under any enactment by reason of its natural beauty, fauna, flora or archaeological or geological or physiographical features or any other natural features.

(2) Without prejudice to the generality of the foregoing, for those purposes the Company may –

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein;
- (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
 - (ii) operate, maintain, renew, alter, extend, demolish and reconstruct structures, works and equipment in the harbour (including those executed or placed pursuant to sub-paragraph (i) above); and
- (c) do all other things which are expedient to facilitate the operation, improvement or development of the harbour undertaking.

(3) The Company must, from time to time, formulate and publish a management plan in relation to their maintenance, conservation, operation, management and improvement of the harbour undertaking.

(4) In the exercise of the powers of sub-paragraph (2)(b), the Company must not –

- (a) interfere with, damage or otherwise injuriously affect apparatus belonging to or maintained by a statutory undertaker; or
- (b) do anything which will obstruct or impede work relating to the inspection or repair of such apparatus,

without the consent of the statutory undertaker concerned.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

19.—(1) The Act of 1847 (except sections 6 to 25, 31, 32, 42, 48, 50, 67 and 83 to 90), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Sections 61, 62, 64, 66, 71, 72 and 73 shall have effect subject to the modification that for the words "level 1 on the standard scale" there are substituted the words "level 3 on the standard scale".

(3) Section 63 shall have effect subject to the modification that for the words after "he shall be" 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 3 on the standard scale".

(4) Section 69 shall have effect subject to the modification that for the words after "fail so to do" to the end of the section there are substituted the words "shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale".

(5) Section 78 shall have effect subject to the modification that for the words "erect any lighthouse or beacon, or exhibit or allow to be exhibited any light, beacon, or sea-mark," there are substituted the words "allow to be exhibited any permanent light, beacon, or sea-mark,".

(6) In construing the provisions of the Act of 1847 as incorporated with this Order –

- (a) the expression "the special Act" means this Order, the expression "the undertakers" means the Company and the expression "the harbour, dock, or pier" shall mean the harbour, the breakwaters and those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
- (b) for the definition of the word "vessel" in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2 of this Order;
- (c) the reference in section 53 of the Act of 1847 to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the harbour master to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

Borrowing powers

20.—(1) Notwithstanding anything contained in any enactment, the Company may from time to time, for the general purposes of the harbour undertaking, borrow upon the security of all or any of its revenues and property and by any method or methods which it sees fit such sums of money as it considers necessary.

(2) Moneys borrowed under paragraph (1) may be applied only to purposes to which capital money is properly applicable.

(3) For the purposes, but without prejudice to the generality, of paragraph (2) purposes to which capital money is properly applicable shall be deemed to include –

- (a) any major works of repair or maintenance of any part of the works forming part of the undertaking;
- (b) 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 Company under this article;
- (c) the repayment within 12 months from the date of borrowing of any sum for the time being outstanding by way of principle on any amount previously borrowed; and
- (d) a payment relating to pensions paid or to be paid to past or present employees of the Company or to the family or dependants of such persons.

Power to charge interest to capital

21. Where the Company, in the exercise of powers conferred upon it by any enactment, commences any work or operations, it may, during such period not exceeding five years from the commencement of the work or operations as it may determine, charge to capital as part of the cost of the work or operations interest on any money raised to defray –

- (a) the cost of the acquisition of any lands for the purpose of the work or operations; and
- (b) the expenses of constructing or carrying out the work or operations.

Temporary borrowing powers

22. The Company may borrow temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions.

Power to grant tenancies and to dispose of land

23.—(1) The Company may, for the purposes of or in connection with the management of the harbour undertaking, dispose of, lease or grant the use or occupation of, or any right or interest in or over, any land, works, buildings, machinery, equipment or other property forming part of the harbour premises for such period, at such rents and other considerations and on such terms and conditions as shall be agreed between the Company and the person taking the same.

(2) The Company may also dispose of, or grant the use or occupation of, any property held by it for the purpose of the harbour undertaking, which it considers to be surplus to that required by it for the purposes of the harbour undertaking.

Commercial activities

24.—(1) The Company may carry on a trade or business of any kind that conduces to the efficient and economical performance by the Company of the management of the harbour including a trade or business carried on in conjunction with another person.

(2) Without prejudice to the generality of paragraph (1) the Company may invest in and promote, or join with any other person in forming, investing in and promoting, companies for investing in, using or developing for any purpose, or for carrying on any trade or business in, the harbour.

Harbour services and facilities

25.—(1) The Company shall have power, within the confines of its statutory duties, to provide, maintain, operate and improve such harbour services and facilities in, or in the vicinity of, the harbour as it may consider necessary or desirable and to take such action as it considers incidental to the provision of such services and facilities.

(2) No other provisions of the Newhaven Harbour Acts and Orders 1863 to 2016 shall prejudice or derogate from the generality of paragraph (1).

Boarding of vessels

26. Any duly authorised officer of the Company may, on producing written authority signed by the harbour master, enter and inspect a vessel in the harbour —

- (a) for the purposes of any enactment relating to the Company or of any byelaw of the Company or any general or special direction, including the enforcement thereof; or
- (b) to prevent or attend to any incident that is likely to cause injury to persons or damage to property or the environment if left unattended,

but, except in an emergency, no entry shall be made under this article without prior notice having been given to the owner or the person appearing to have charge of the vessel at least 48 hours before the entry and the notice shall have annexed to it a copy of this article.

Information for the purpose of landing charges

27.—(1) When passengers are embarked on or disembarked from, or cargo is loaded onto or unloaded from, a vessel within the harbour the owner or master of the vessel, if requested to do so by the Company, must provide to the Company details in writing of the number of persons embarking on or disembarking from the vessel and the weight, quantity, volume and composition of cargo being loaded onto or unloaded from the vessel so as to enable the Company to determine whether any of the Company's published landing fees or other charges are payable in respect of those persons or cargo, in accordance with section 26(2) of the Harbours Act 1964 or other legislation applicable to the harbour.

(2) A request made under paragraph (1) may apply to a single vessel movement or (in the case of a vessel which habitually uses the harbour) to every occasion upon which the vessel arrives at or departs from the harbour.

(3) The owner or master of a vessel in respect of which a request is made under paragraph (1) must provide the details so requested within such period (being not less than 24 hours) after the arrival of the vessel as may be specified by the Company, and in any event prior to the departure of the vessel.

(4) Paragraph (1) shall not apply in relation to non-commercial vessels occupying moorings within the harbour under licences granted by the Company, or to vessels paying visitor berthing rates to the Company.

(5) For the purposes of paragraph (4) "non-commercial vessel" means a vessel used for sport or recreation other than a vessel which is carrying, or is available to carry, members of the general public for hire or reward.

(6) A person who, without reasonable excuse, fails to comply with a requirement made under paragraph (1) in accordance with paragraph (3), or who in compliance with such a requirement provides information which he knows to be false, or recklessly provides information which is false, in a material particular, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Obstruction of officers

28.—(1) A person who —

- (a) intentionally obstructs or threatens an officer of the Company acting in pursuance of the performance of his functions; or
- (b) without reasonable excuse fails to give such an officer any information (including his name, address, telephone number and email address) which the officer may require for the purpose of the performance of his functions,

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

(2) A person who in giving such information makes a statement which he knows to be false, or recklessly provides information which is false, in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Crown rights

29.—(1) Nothing in this Order shall-

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the undertaker to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any part of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to —

- (i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the prior consent in writing of those Commissioners; or
- (ii) 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) A consent under paragraph (1)(b) may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

30. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Corporation of Trinity House of Deptford Strond.

Notices

31.—(1) Without prejudice to the discretion of the harbour master under article 7(5) and subject to the following provisions of this article, and to the other provisions of this Order, a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, must be in writing and may be served by first class post.

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

(3) Where a person on whom a notice or other document is to be served has agreed in writing that service may be by email, or other electronic means, the Company may employ this method of service until such time as the person informs it in writing that he is no longer willing to receive notices or documents by email or by such other electronic means.

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

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

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) in the case of a notice or document to be served on a person as having an interest in, or as the occupier of, any land, it may be served by —
 - (i) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land;
- (b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited) or by handing it to a member of the crew;

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- (c) in the case of any other notice or document or a notice or document that is not capable of being served pursuant to sub-paragraph (b) it may be served by displaying it at the office of the harbour master for the period of its duration.
- (6) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.