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STATUTORY INSTRUMENTS

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**1997 No. 2949**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Portland Harbour Revision Order 1997**

*Made* - - - - - *8th December 1997*

*Coming into force* - - - - - *1st January 1998*

Whereas Portland Port Limited (being a person appearing to the Secretary of State to have a substantial interest) have applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

And whereas there were objections made to the application which were not withdrawn, and an inquiry was held in accordance with paragraph 4(3) of Schedule 3 to the said Act(b);

And whereas the Secretary of State has considered the objections made and not withdrawn and the report of the person holding the inquiry;

And whereas the Secretary of State is satisfied as mentioned in subsection (2)(b) of the said section 14;

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

**PART I**

**PRELIMINARY**

**Citation and Commencement**

**1.** This Order may be cited as the Portland Harbour Revision Order 1997 and shall come into force on 1st January 1998.

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- (a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.
- (b) Schedule 3 was amended by the Transport Act 1981, section 18 and Schedule 6, paragraphs 4(2) to (7) and 12 and by the Transport and Works Act 1992, Schedule 3, paragraph 10.
- (c) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (d) S.I. 1981/238.

## Interpretation

### 2.—(1) In this Order:—

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

“the Admiralty Charts” means the Admiralty Charts for Portland Harbour and its approaches published at the date of this Order coming into force and numbered 2255 and 2268;

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

“the breakwaters” means the Inner Breakwater, the Outer Breakwater, the North-eastern Breakwater and the Northern Arm;

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

“the Company” means Portland Port Limited (which is registered in England and Wales with the number 3002686);

“the Council” means the Weymouth and Portland Borough Council;

“dredging licence” means a licence granted under article 34 of this Order;

“fish”, where used as a verb, means fishing (whether from a vessel or otherwise) by net, line, speargun or otherwise and includes both trawling and the placing or laying of pots for prawn, crab and lobster, and “fishing” shall be construed accordingly;

“general direction” means a direction given under article 16 of this Order;

“the harbour” means so much of the sea to the south of Weymouth Bay below the level of high water as is within the following imaginary straight lines:—

- (a) a line drawn east (true) from a point at Latitude 50° 36.42' N, Longitude 02° 26.50' W (the Nothe Point, Weymouth) to a point at Latitude 50° 36.42' N, Longitude 02° 23.84' W, being coterminous with the southern limit of Weymouth Harbour;
- (b) a line drawn south (true) from that point to a point at Latitude 50° 32.28' N, Longitude 02° 23.84' W;
- (c) a line drawn west (true) from that point to a point at Latitude 50° 32.28' N, Longitude 02° 25.45' W (the north point of Church Ope Cove); and
- (d) a line drawn across New Channel at its entrance to East Fleet coterminous with the western side of Ferry Bridge;

“the harbour master” means any person appointed as such by the Company, and includes his duly authorised deputies and assistants and any other person for the time being authorised by the Company to act, either generally or for a specific purpose, in the capacity of harbour master;

“the harbour premises” means the docks, quays, piers, wharves, berths, breakwaters, landing places, roads, bridges, sheds and all other works and conveniences, land and premises at any time used, intended to be used or set aside for the purposes of, or in connection with, the harbour undertaking;

“the harbour undertaking” means the undertaking of the Company authorised by this Order;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“the inner harbour” means that part of the harbour which is enclosed by the breakwaters, and includes the breakwaters;

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

“the main fairways” means—

- (a) the fairway known as the North Ship Channel, being an area seaward from the entrance to the inner harbour between two lines of true bearing 036° from “C” Head Light and 090° from “B” Head Light to a distance of 600 metres and inward from the entrance to the inner harbour between two lines of true bearing 260° from “C” Head Light and 210° from “B” Head Light to a distance of 600 metres; and
- (b) the fairway known as the East Ship Channel, being an area seaward from the entrance to the inner harbour between two lines of true bearing 015° from “A” Head Light and 090° from Fort Head Light to a distance of 600 metres and inward from the entrance to the inner harbour between a line of true bearing 270° from “A” Head Light and the Outer Breakwater to a distance of 600 metres;

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

“operator” and “telecommunications code system” have the meanings given by paragraph 1(1) of Schedule 4 to the Telecommunications Act 1984(f);

“the outer harbour” means that part of the harbour which does not comprise the inner harbour;

“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 or their body weight for the purpose; or
- (c) by a combination of the methods referred to in (a) and (b) above;

“the Queen’s Harbour Master” means the person for the time being appointed to be Queen’s Harbour Master of the Dockyard Port of Portland under the Dockyard Ports Regulation Act 1865(g);

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

“small vessel” means a vessel of less than 20 metres in length;

“special direction” means a direction given under article 18 of this Order;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990(h);
- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(i);
- (c) any operator of a telecommunications code system;

“tidal work” means so much of any work as is on, under or over tidal waters or land below the level of high water;

“Torpedo Pier Light” means the light on the south-east corner of Torpedo Pier located at Latitude 50° 35.94' N, Longitude 002° 26.75' W;

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

“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 a ship, boat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a personal watercraft, a seaplane on the surface of the

water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

“Weymouth Harbour” means the tidal inlet of the sea known as Weymouth Harbour and so much of the area seaward thereof as is referred to in section 8 of the Weymouth and Melcombe Regis Corporation Act 1887(j), together with the area described in the Schedule to the Weymouth and Portland Harbour Revision Order 1993(k);

“windsurfer” means a board with a sail or sails designed to be operated by a person or persons standing upright on it;

“works” means works of any description and includes the reclamation of land reasonably required for the purpose of executing works; and

“works licence” means a licence granted under article 33 of this Order.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) In this Order references to named, numbered or lettered breakwaters, heads of breakwaters, beacons, buildings, channels, coves, creeks, lights, piers and slipways, or other points, places, structures and apparatus are references to those so named, numbered or lettered on the Admiralty Charts.

(4) A vessel of any description shall be a ship for the purposes of the application of the Harbours Act 1964 to the harbour undertaking.

### **Incorporation of Harbours, Docks and Piers Clauses Act 1847**

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, 32, 42, 48 to 50, 67, 77, 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) Section 63 shall have 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 3 on the standard scale”.

(3) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” 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”.

(4) 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,”.

(5) 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(1) 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.

## PART II

### HARBOUR REGULATION

#### Transfer of jurisdiction

4.—(1) On the day this Order comes into force the Queen's Harbour Master shall cease to be the harbour authority for the harbour and to have any duties, powers, rights, privileges or authorities in respect of it, and the Company shall become the harbour authority.

(2) The area within which the Company shall have jurisdiction for the purposes of pilotage under Part I of the Pilotage Act 1987<sup>(1)</sup> shall include (in addition to the harbour) so much of the area outside the harbour as lies to the west of a straight line drawn from a point at Latitude 50°32.922'N, Longitude 02°24.867'W (Grove Point, Portland) to a point at Latitude 50°37.450'N, Longitude 02°19.317'W (White Nothe, Weymouth), but excluding Weymouth Harbour.

#### General functions of Company

5.—(1) The Company may, subject to the provisions of this Order, take all such steps from time to time as they may consider necessary or desirable for the maintenance, operation, management and improvement of the harbour, the harbour premises and the facilities (including recreational facilities) afforded therein or in connection therewith, and for the conservation of the harbour's flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without prejudice to the generality of the foregoing, the Company may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and the harbour premises 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 and the harbour premises 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 and the harbour premises (including those executed or placed pursuant to paragraph (i) above); and
- (c) do all other things which in their opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.

(3) The Company shall, 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) above, the Company 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.

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(1) 1987 c. 21.

### **Consultative Committee**

6.—(1) The Company shall establish a committee, to be known as the Portland Harbour Consultative Committee, which they shall consult (except in a case of special urgency or where it would be seriously detrimental to the commercial interests of the Company to do so) on all matters substantially affecting the conservation, protection, regulation, management, maintenance and improvement of the harbour and its navigation.

(2) Subject to the provisions of this article, the Consultative Committee shall consist of not less than twelve members appointed by the Company, of whom—

- (a) two shall be appointed on the nomination of the Council (one of whom to represent the body for the time being responsible for emergency planning);
- (b) one shall be appointed on the nomination of the Nature Conservancy Council for England;
- (c) one shall be appointed on the nomination of the Royal Yachting Association;
- (d) one shall be appointed on the nomination of the Southern Sea Fisheries Committee;
- (e) one, to represent shipping interests in the harbour, shall be appointed on the nomination of the Chamber of Shipping;
- (f) one, to represent the defence interests in the harbour, shall be appointed on the nomination of the Defence Evaluation and Research Agency (but only whilst Schedule 2 to this Order remains in force);
- (g) one, to represent commercial interests in the harbour, other than shipping and fishing, shall be appointed after consultation with such persons (if any) appearing to the Company to be representative of those interests as the Company consider appropriate;
- (h) one, to represent local fishing interests in the harbour, shall be appointed after consultation with such persons (if any) appearing to the Company to be representative of those interests as the Company consider appropriate;
- (i) one, to represent the local conservation interests in the harbour, shall be appointed after consultation with such persons (if any) appearing to the Company to be representative of those interests as the Company consider appropriate;
- (j) up to four may be appointed to represent such persons interested in the harbour, other than those mentioned in the preceding sub-paragraphs of this paragraph, as the Company from time to time think fit.

(3) If it appears to the Company in the case of any of the appointments referred to in sub-paragraphs (a) to (f) of paragraph (2) above that the body by whom the nomination is to be made has refused or failed to nominate a member after being requested by the Company to do so, or if the body by whom any of the said nominations is to be made has ceased to have an identifiable existence, the appointment in question may be made by the Company after consultation with such persons (if any) appearing to the Company to be representative of the interests represented, or formerly represented, by the nominating body specified in the relevant sub-paragraph of paragraph (2) above as the Company consider appropriate.

(4) The Company shall not be obliged to appoint a person who is duly nominated in accordance with any of sub-paragraphs (a) to (f) of paragraph (2) above but may request the body or bodies who made the nomination to nominate another person.

(5) The term of office of a member of the Consultative Committee shall be three years from the date of his appointment and, on ceasing to hold office, he shall be eligible for re-appointment: Provided that a member of the Consultative Committee may at any time by notice in writing to the Company resign his office.

(6) The Consultative Committee may determine its own quorum and procedure.

(7) The Company shall appoint the Chairman of the Consultative Committee.

(8) Without prejudice to the generality of paragraph (1) above, the Company shall consult the Consultative Committee on proposals to—

- (a) formulate and publish a management plan under article 5(3) of this Order;
- (b) impose or vary any charges in relation to recreational use of the harbour and its use by small vessels;
- (c) make byelaws;
- (d) construct or license any significant works in the harbour; or
- (e) carry out or license dredging.

(9) The Company shall take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by the Consultative Committee, whether or not it has been consulted by the Company on the matter, recommendation or representation so referred or made.

### **Aids to navigation**

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

(2) The Company shall not exercise the powers of paragraph (1) above—

- (a) without the approval of the Trinity House; or
- (b) within the limits of Weymouth Harbour or on land immediately adjacent thereto, without the approval of the Council in writing.

### **Removal of obstructions other than vessels**

8.—(1) The Company may remove anything, other than a vessel, 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 Company under paragraph (1) above is so marked as to be readily identifiable as the property of any person, the Company 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 Company, possession may be re-taken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served) and, if possession of the thing removed is not so retaken, it shall at the end of that period vest in the Company.

- (a) Notwithstanding the provisions of paragraph (2) above the Company may, at such time and in such manner as they think fit, dispose of anything removed under paragraph (1) above which is not 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.
- (b) If anything disposed of by the Company under this paragraph is sold, the Company may retain out of the proceeds of sale any expenses incurred by them under this article, and any surplus—
  - (i) shall be paid to any person who within three months from the time when the thing came into the custody of the Company proves to the reasonable satisfaction of the Company that he was the owner thereof at that time; or

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<sup>(m)</sup> 1995 c. 21.

(ii) if within the said period no person proves his ownership at the said time, shall vest in the Company.

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

### **As to use of harbour premises**

**9.**—(1) The Company may from time to time set apart and appropriate any part of the harbour premises and waters adjacent thereto 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 Company may think fit.

(2) No person or vessel shall make use of any part of the harbour premises and waters adjacent thereto so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Company; and—

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

### **Moorings**

**10.**—(1) The Company may provide, place, lay down, maintain, renew, use, have and remove such 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 Company 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 the Company such reasonable charges as the Company may from time to time prescribe.

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

- (a) The Company may give notice in writing to the person having the 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 mooring so as to enable the Company to provide moorings in accordance with paragraph (1) above.
- (b) The Company 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) above as soon as such mooring has been laid down.
- (c) If any person fails to comply with a notice given by the Company under this paragraph, the Company 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.

- (a) The Company 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.
  - (b) 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 by the Company or in which he has no appropriate interest.
  - (c) Any such licence shall be valid only for a period of one year commencing with the date on which it is granted.
  - (d) The Company may charge for such a licence such reasonable fee as the Company may from time to time prescribe.
- (6) Any person who—
- (a) intentionally obstructs any person acting under the authority of the Company in setting out moorings;
  - (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof;
  - (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Company under this article; or
  - (d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Company 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.

(7) If any person commits an offence under paragraph (6)(d) above, the Company may remove the mooring in question and recover from that person the expenses incurred in doing so.

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

#### **Repair of landing places, etc.**

**11.**—(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 Company.

(2) The Company may by notice require the owner or occupier of a relevant feature which in the opinion of the Company 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 Company’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 Secretary of State on an appeal may substitute therefor—

- (a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
  - (b) the Company 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 Company under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal to the Secretary of State against the notice.

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

(7) A person who appeals under paragraph (5) above shall give to the Company notice of his appeal accompanied by a copy of his statement of appeal; and the Company shall, within 21 days of receipt of the notice, be entitled to furnish to the Secretary of State their observations on the appeal.

(8) On an appeal under paragraph (5) above, the Secretary of State shall either quash the notice, modify its requirements or dismiss the appeal.

### **Power to grant permits in respect of certain pleasure craft**

**12.**—(1) The Company 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 a 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 Company may think fit, and may be suspended or revoked by the Company; 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) above, the Company shall only have regard to the interests of safe navigation within the harbour.

(4) Except with the written permission of the Company, no person shall carry, or permit to be carried, paying passengers in a pleasure craft unless the person in charge of it and any other person navigating it have been granted a permit under this article and the conditions of the permit are complied with, or at any time during the suspension of the permit.

(5) Any person who contravenes or otherwise fails to comply with paragraph (4) above 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 the provisions of this article may appeal to a magistrates' court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give 24 hours' written notice of such appeal, and the ground thereof, to the Company and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt.

(7) In this article, "pleasure craft" means any vessel which has a passenger certificate issued by the Secretary of State pursuant to regulations under sections 85 and 86 of the Merchant Shipping Act 1995 or which is licensed by the Council under section 94 of the Public Health Acts Amendment Act 1907<sup>(n)</sup>.

### **Power to dredge**

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

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<sup>(n)</sup> 1907 c. 53.

(2) No materials so dredged shall be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

### **Power with respect to disposal of wrecks**

**14.**—(1) In its application to the Company, section 252 of the Merchant Shipping Act 1995 (which confers on bodies which are harbour authorities within the meaning of that Act powers with respect to any vessel sunk, stranded or abandoned in, or in or near any approach to, any harbour or tidal water in such manner as to be an obstruction or danger to navigation) shall have effect in relation to the harbour and the approaches thereto 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) below, and to any enactment for the time being in force limiting his liability, the Company 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.

(a) Except in a case which is in the opinion of the Company a case of emergency, paragraph (2) above 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 Company have given to the owner of the vessel not less than 48 hours' notice of their intention to do so.

(b) If before the notice expires the Company 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 Company shall not exercise the powers 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 the disposal thereof 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 Company.

(4) Notice under paragraph (3) above to the owner of any vessel may be served by the Company 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 Company, or is not in the United Kingdom, by displaying the notice at the office of the Company for the period of its duration.

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

(6) The powers conferred on the Company 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 and the approaches thereto.

### **General byelaws**

**15.**—(1) The Company may make such byelaws as they think fit for the efficient management and regulation of the harbour and the harbour premises.

(2) Without prejudice to the generality of paragraph (1) above, the Company may, from time to time, make such byelaws as they think fit with reference to all or any of the following—

(a) regulating the use of any works and facilities provided by the Company;

(b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour or the harbour premises and to any aids to navigation which are used in connection with the harbour;

- (c) regulating the conduct of all persons in the harbour or the harbour premises, not being—
  - (i) members of a police force;
  - (ii) officers or servants of the Crown; or
  - (iii) members of a fire brigade,  
whilst in the exercise of their duties as such;
- (d) regulating the placing, maintenance and use of moorings within the harbour;
- (e) preventing and removing obstructions or impediments within the harbour or the harbour premises;
- (f) regulating the launching of vessels from the harbour premises;
- (g) regulating or prohibiting the use on the harbour premises, in the harbour or on board any vessel therein of fires, lights, tobacco or any other substance, equipment, tools or appliances which the Company consider involve a risk of fire, explosion or chemical reaction;
- (h) prohibiting the use of or regulating the use, movement, speed, placing, loading, unloading, driving and parking of vehicles within the harbour premises;
- (i) requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the harbour;
- (j) regulating the navigation of vessels in the harbour and their entry into and departure therefrom and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
- (k) regulating the embarkation of persons on, or their disembarkation from, vessels within the harbour;
- (l) prescribing the lights and signals to be exhibited or made—
  - (i) by vessels aground within the harbour;
  - (ii) by vessels or other devices used for marking obstructions within the harbour; and
  - (iii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the harbour;
- (m) prohibiting or regulating the discharge into the harbour of any material or substance;
- (n) regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, breakwater or other installation or structure of any kind within the harbour, from any vessel within the harbour or from the foreshore where such fishing interferes with the operation of the port or the safety of navigation in the harbour;
- (o) regulating or prohibiting bathing within the harbour;
- (p) regulating or prohibiting the use by vehicles of the foreshore within the harbour premises;
- (q) regulating the berthing, mooring and anchoring of vessels in any part of the harbour or the harbour premises, and regulating the careening and beaching of vessels within the harbour premises;
- (r) regulating the use within the harbour of yachts, sailing boats, rowing boats, pleasure craft, windsurfers, personal watercraft and other small craft;
- (s) regulating or prohibiting the activities within the harbour of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar recreational pursuits;
- (t) regulating the conveyance to and the laying down at or on the harbour premises of all goods intended for shipment;

- (u) regulating the control of animals within the harbour or the harbour premises;
  - (v) preventing the disposal of any waste matter except at places or in a manner prescribed by the Company;
  - (w) regulating the conveyance, landing, laying down, discharge and removal of goods, gear, equipment, timber, logs, floats, or rafts of timber and other items within the harbour or the harbour premises;
  - (x) regulating the exercise of the powers vested in the harbour master; and
  - (y) for the purposes specified in section 83 of the Act of 1847.
- (3) In this article “signals” includes sound signals.
- (4) Byelaws made under this article may—
- (a) provide for imposing upon a person offending against them, or against any condition, requirement or direction imposed, made or given thereunder, a fine not exceeding level 4 on the standard scale on summary conviction;
  - (b) relate to the whole of the harbour or the harbour premises or to any part thereof;
  - (c) make different provisions for different parts of the harbour or the harbour premises or in relation to different classes of vessels or vehicles; and
  - (d) otherwise make different provision for different circumstances.
- (5) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
  - (b) that he had a reasonable excuse for his act or failure to act; or
  - (c) that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and that all reasonable steps were taken to prevent the commission of the offence.
- (a) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972<sup>(o)</sup> (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Company under this article; and those provisions, in their application to any such byelaws, shall have effect subject to the modification that for the references to a local authority there are substituted references to the Company.
- (b) Subsection (7) of the said section 236, in its application to any such byelaws, shall (subject to sub-paragraph (c) below) be modified by the insertion of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.
- (c) Where the confirming authority proposes to make a modification which appears to him to be substantial, then—
- (i) he shall inform the Company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and
  - (ii) 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 Company and by any other persons who have, or are likely to have, been informed of it.
- (d) The said section 238, in its application to any such byelaws, shall have effect subject to the modification that for the reference to the proper officer of the authority there is substituted a reference to the Secretary of the Company.

- (e) The confirming authority for the purposes of the said section 236 in its application to the Company shall be the Secretary of State.
- (a) Schedule 1 to this Order (which contains provisions for the general regulation of the harbour and the harbour premises) shall have effect, and its provisions shall be deemed to be byelaws made by the Company under this article and subsequently confirmed by the Secretary of State.
- (b) For the avoidance of doubt, byelaws made by the Company under this article may amend or revoke, either wholly or partially, the provisions of that Schedule.

### **General directions to vessels**

**16.**—(1) The Company may, after consultation with the Chamber of Shipping 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 and, without prejudice to the generality of the foregoing, for any of the following purposes:

- (a) for designating areas, routes or fairways in the harbour 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 descriptions of aids to navigation specified in the direction;
  - (d) for prohibiting—
    - (i) 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 premises; and
    - (ii) entry into or navigation within either of the main fairways during any temporary obstruction thereof;
  - (e) requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master for effecting any of the purposes of this paragraph.
- (2) A direction 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 under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) of this paragraph.

(3) The Company may, after consultation with the Chamber of Shipping except in cases of emergency, revoke or amend any general direction.

### **Publication of general directions**

**17.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Company as soon as practicable once in a newspaper circulating in the locality of the harbour and, if the notice relates to the giving or amendment of a direction, shall state a place at which copies thereof may be inspected and bought and the price thereof.

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

### **Special directions**

**18.**—(1) The harbour master may give a special direction in respect of a vessel anywhere in 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;
- (f) regulating the use of ballast;
- (g) requiring the removal from any part of the harbour of the vessel if—
  - (i) it is on fire;
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property;
  - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons or the dispatch of business thereat; or
  - (iv) its removal is necessary to enable maintenance or repair work to be carried out to the harbour premises; and
- (h) requiring its removal outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

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

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

### **Failure to comply with directions**

**19.**—(1) The master of a vessel who fails 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.

(2) In any proceedings for an offence under paragraph (1) above, it shall be a defence for the person charged to prove that he had reasonable grounds for believing that non-compliance with the direction in question was necessary to secure the safety of any vessel or to prevent injury to any person or damage to any vessel or cargo, or that in the circumstances compliance was impracticable.

### **Enforcement of directions**

**20.**—(1) Without prejudice to any other remedy available to the Company, if a special direction is not complied with within a reasonable time, the harbour master may 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 a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with: Provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Company in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Company in respect of the vessel.

#### **Master's responsibility in relation to directions**

**21.** 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, to persons on board the vessel, to the cargo or any other person or property.

## **PART III CHARGES**

#### **Charges for services or facilities**

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

#### **Payment of charges**

**23.—(1)** The charges which the Company are for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment shall be payable before the removal from the harbour or the harbour premises 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 terms and conditions as the Company may from time to time specify in their published list of charges.

(2) Charges payable to the Company on or in respect of—

- (a) a vessel, shall be payable by the owner or master thereof;
- (b) goods, shall be payable by the owner, consignee or shipper thereof.

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

(4) Without prejudice to the generality of paragraph (1) above, the terms and conditions as to the payment of charges which the Company may from time to time specify may include the time when a charge falls due for payment and may require such information to be given to the Company by the owner or master of a vessel or a person using a service or facility of the Company as the Company may require in connection with the assessment or collection of a charge.

#### **Compounding arrangements and rebates**

**24.** Nothing in section 30 of the Harbours Act 1964 shall require the Company 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**

**25.—(1)** The Company may, if they think fit, require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Company, reasonable having regard to the amount or probable amount of the charge.

(2) Where such a person fails to deposit or guarantee the sum of money required the Company may detain in the harbour or on the harbour premises the vessel or goods in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

### **Liens for charges**

**26.**—(1) A person who by agreement with the Company 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 thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Company 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.

### **Refusal to pay charges for landing place**

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

### **Exemptions from harbour dues**

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

- (a) vessel—
  - (i) belonging to any member of the Royal Family;
  - (ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward;
  - (iii) belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service;
  - (iv) 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, the 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 of the Environment, Transport and the Regions in the execution of their duty shall at all times be exempt from harbour dues.

(3) No harbour dues shall be payable in respect of a vessel which merely passes through the limits of the outer harbour without mooring, anchoring or making use of any facilities provided by the Company.

(4) In this article “harbour dues” means ship, passenger and goods dues which the Company may demand under section 26 of the Harbours Act 1964.

### **Recovery of charges**

**29.** In addition to any other remedy given by this Order and by the Act of 1847 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 Company refuses or neglects to pay the same or any part thereof, whether or not the Company's collector has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Company may recover any charges payable to them as a debt in any court of competent jurisdiction.

#### **Harbour master may prevent sailing of vessels**

**30.** The harbour master 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 or of passengers thereon or of the goods imported or exported therein.

## **PART IV**

### **Control of Works and Dredging in the Harbour**

#### **Restriction of works and dredging**

**31.**—(1) Subject to paragraph (3) below, no person other than the Company shall—

- (a) construct, alter, renew or extend any works; 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, and no such person shall do so 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 33 of this Order or, as the case may require, article 34 of this Order.

(2) The Company 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 thereof to its former condition; and if he fails to comply with the notice, the Company may carry out the works so required and may recover from him the cost of so doing.

(3) 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.

(4) 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**

**32.**—(1) This article applies to any operations or works in the harbour of a statutory undertaker 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) below, 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 Company and has supplied the Company with such particulars as they may reasonably require.

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

**33.**—(1) The Company 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 land below the level of high water, notwithstanding that the works as constructed, altered, renewed, or extended interfere with the public right of navigation or any other public right.

(2) Application for a works licence shall be made in writing to the Company 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 taken to enable him to obtain such rights if the licence is granted,

and, in granting a licence, the Company may require modifications in the plans, sections and particulars so submitted.

(3) The Company 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.

(4) As a condition of the granting of a licence, the Company may require a licensee, being an applicant to whom a licence has been granted or his successor, where works are constructed pursuant to the licence, to pay such reasonable fees in respect of the Company's administrative expenses and overheads in supervising or inspecting where necessary the construction or maintenance of the works.

(5) Where the Company refuse to grant a works licence which has been applied for they shall give reasons in writing for their refusal.

(6) Where the Company 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.

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

(8) Articles 36 to 41 of this Order 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 Company as respects tidal works.

(9) 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.

### **Licence to dredge**

**34.**—(1) The Company 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 Company 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 Company may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (3) to (7) and (9) of article 33 of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995) 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:

Provided that—

- (i) no such material shall be laid down or deposited in any place within the harbour below the level of high water except in such positions as may be approved by the Company and subject to such conditions as may be imposed by the Company;
- (ii) if it appears to the holder of the dredging licence that the Company have unreasonably withheld their approval under paragraph (i) of this proviso or that any condition imposed by the Company under that paragraph is unreasonable, he may appeal to the Secretary of State whose decision shall be binding upon the parties.

#### **Appeals in respect of works or dredging licence**

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

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

may, within 28 days from the date on which the Company notify the applicant of their decision or the date on which the Company are, under article 33(7) of this Order, deemed to have refused the application, appeal to the Secretary of State.

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

(3) The appellant shall send to the Company a copy of the notice of his appeal; and the Company may, within 28 days of the receipt of the notice, furnish to the Secretary of State their observations on the appeal.

(4) The Secretary of State may confirm, vary or revoke the decision appealed against and may make such consequential amendments as he may specify.

(5) The Secretary of State may direct the Company to give effect to his decision, and the Company shall forthwith comply with any direction given.

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

**36.**—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is constructed, altered, replaced or re-laid 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 Company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work, or part of it, and restore the site to its former condition,

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

### **Lights on tidal works**

**37.**—(1) The Company shall at or near a tidal work during the whole time of the construction, extension, enlargement, alteration, replacement or relaying thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fail to comply with any requirement of a direction given under paragraph (1) above, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Provision against danger to navigation**

**38.**—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof the Company shall as soon as reasonably practicable notify the Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Trinity House may from time to time direct.

(2) If the Company fail to notify the Trinity House as required by paragraph (1) above or to comply with any requirement of a direction under it, the Company shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

**39.**—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as he thinks fit.

(2) Where—

- (a) a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay; and
- (b) that part of the work on or over land above the level of high water is in such a condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore,

the Secretary of State may include that part of the work, or any portion thereof, in any notice under paragraph (1) above.

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Company, they have failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company.

### **Survey of tidal works**

**40.** If he deems it expedient, the Secretary of State may at any time order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by him in any such survey and examination shall be recoverable from the Company.

### **Permanent lights on tidal works**

**41.**—(1) After the completion of a tidal work the Company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Trinity House may from time to time direct.

(2) If the Company 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 the statutory maximum and on conviction on indictment to a fine.

## **PART V**

### **MISCELLANEOUS AND GENERAL**

#### **Power to mortgage harbour undertaking**

**42.** The Company may mortgage, charge or otherwise encumber the harbour undertaking or any part thereof.

#### **Power to grant tenancies and to dispose of land**

**43.**—(1) The Company may, for the purposes of or in connection with the management of the harbour undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, 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 them for the purpose of the harbour undertaking, which they consider to be surplus to that required by them for the purposes of the harbour undertaking.

#### **Subsidiaries**

**44.**—(1) The Company may form and promote a wholly-owned subsidiary for carrying on any activities which the Company have power to carry on under or by virtue of this Order.

(2) The Company shall secure that any company formed in exercise of the powers conferred by paragraph (1) above remains such a wholly-owned subsidiary.

(3) The Company may enter into arrangements with a company formed in exercise of the powers conferred by paragraph (1) above for the transfer to that company from the Company or from any other company so formed, in such manner and on such terms (including payments by any of the parties to the arrangements to any of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Company or of that other company which are relevant to the carrying on of the activities to be carried on by the first-mentioned company.

(4) In this article, “wholly-owned subsidiary” has the meaning given by section 736 of the Companies Act 1985<sup>(p)</sup>.

### **Development, etc., of land**

**45.** The Company 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 land within the harbour premises.

### **Local inquiries**

**46.** 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<sup>(q)</sup> shall apply to any such inquiry as if it were an inquiry held in pursuance of subsection (1) of that section and the Company were a local authority.

### **Defence of due diligence**

- (a) In proceedings for an offence under any provision of this Order mentioned in sub-paragraph (b) below, 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.
- (b) The provisions referred to in sub-paragraph (a) above are—
  - article 12(5);
  - article 37;
  - article 38; and
  - article 41.

(2) If in any case the defence provided by paragraph (1)(a) above 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, they have 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 their possession.

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

**48.—(1)** The Company may designate any part of the harbour premises for the loading and unloading of any goods to which this article applies.

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

(3) The goods to which this article applies are goods in bulk and goods the nature or character of which is such as, in the opinion of the Company, to give rise to special risk of contamination, taint,

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<sup>(p)</sup> 1985 c. 6.

<sup>(q)</sup> 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.

stain, injury or danger to other goods or to persons, property or water or to necessitate the provision of special facilities for the handling thereof or for the safety, protection, welfare or accommodation of persons employed in, or in connection with, such handling.

#### **Liability for safety of goods**

**49.** The Company shall not be responsible for the safekeeping of goods deposited in any part of the harbour premises not specifically set apart by the Company for the purpose of warehousing.

#### **Boarding of vessels**

**50.** A duly authorised officer of the Company 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 (including any enactment so relating contained in subordinate legislation) or of any byelaw of the Company relating to the harbour, including the enforcement thereof.

#### **Power to remove goods**

**51.—(1)** If any goods are left on or in any part of the harbour premises the Company may require the owner of the goods to remove them; and if the goods are not so 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 Company may cause them to be removed to their own or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

- (a) Notwithstanding such removal on behalf of the Company, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Company by the owner in respect of the goods.
- (b) The power of the Company for preventing the removal of goods until the cost of removal and the charges have been paid shall extend and apply to any goods removed or placed in store under this article.

(3) The Company may, if they think fit, after giving seven days' notice to the owner of the goods, and shall if so required by the owner of the goods, sell or otherwise dispose of the goods, in such manner as they think fit and reimburse themselves out of the proceeds of sale, and the Company shall hold any surplus of such proceeds on trust for the person entitled thereto.

(4) In this article, "goods" includes vehicles and equipment.

#### **Removal of vehicles and boats**

**52.—(1)** If a vehicle or boat is left without the permission of the Company—

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

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

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

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

- (b) The expenses of and incidental to the removal of a vehicle or boat under this article shall be recoverable from any person responsible.
- (4) For the purposes of paragraph (3) above “person responsible” means—
- (a) the owner of the vehicle or boat at the time when it was put in the place from which it was removed under paragraph (1) above, unless he shows that he was not concerned in, and did not know of, its being put there; or
- (b) any person by whom the vehicle or boat was put in that place.
- (5) If the Company in exercise of the powers of this article remove a vehicle to a place not readily visible from the place whence it is so removed they shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of Regulations made under section 105 of the Road Traffic Act 1988(r) at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.
- (6) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour premises.

### **Obstruction of officers**

**53.**—(1) Any person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of this Order;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which he may require for the purpose of the performance of his functions,

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**

**54.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of 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
- (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) A consent under paragraph (1) above may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

### **Saving for Trinity House**

**55.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Trinity House.

### **Protective provisions**

**56.** Schedule 2 to this Order shall have effect for protecting the continuing use of the harbour for various defence-related purposes.

### **Revocation of Dockyard Port Orders**

**57.** On the coming into force of this Order the following Orders in Council or provisions thereof shall be revoked—

- (a) the Dockyard Port of Portland Order 1963(**s**);
- (b) the Dockyard Port of Portland (Amendment) Order 1965(**t**);
- (c) the Dockyard Port of Portland (Amendment) Order 1967(**u**);
- (d) article 6 of the Dockyard Ports (Amendment) Order 1970(**v**);
- (e) the Dockyard Port of Portland (Amendment) Order 1973(**w**).

### **Amendment of Weymouth and Portland (Pilotage) Harbour Revision Order 1988**

**58.**—(1) In the Weymouth and Portland (Pilotage) Harbour Revision Order 1988(**x**), at the end of article 3 (Extension of limits of jurisdiction for purposes of pilotage), there shall be added the following words—

“, but excluding Portland Harbour (as defined by the term “the harbour” in article 2(1) of the Portland Harbour Revision Order 1997).”

(2) The plan deposited in connection with that order (therein called the “signed plan”) shall be treated as being amended accordingly.

### **Saving for Weymouth and Portland Borough Council**

**59.** Nothing in this Order shall restrict or otherwise affect the discharge by the Council of any functions under any enactment relating to public health, environmental protection, coast protection, flood defence or land drainage.

### **For protection of Environment Agency**

**60.**—(1) For the protection of the Environment Agency (in this article referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the Company and the Agency, have effect.

(2) In this article—

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

“specified work” means so much of any permanent or temporary work or operation authorised by or under this Order (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is situated in, on, under, over or within 16 metres of the scheme; and

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(x) S.I. 1988/1707.

“the scheme” means that part of the Portland Sea Defence Scheme which comprises an open trapezoidal drain discharging into the harbour and an outfall into the harbour by way of three culverts.

- (a) Before carrying out any specified work, the Company shall submit to the Agency plans of the work and such further particulars available to them as the Agency may within 14 days of the submission of the plans reasonably require.
- (b) Any such specified work shall not be carried out except in accordance with such plans as may be approved in writing by the Agency or as are settled in accordance with paragraph (7) below.
- (c) Any approval of the Agency required under this paragraph—
  - (i) shall not be unreasonably withheld;
  - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within one month of the submission of plans for approval; and
  - (iii) may be given subject to such reasonable requirements as the Agency may impose for the protection of the scheme.

(4) Without prejudice to the generality of paragraph (3) above, the requirements which the Agency may impose under that paragraph include conditions requiring the Company at their own expense when carrying out the specified works to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary to safeguard the scheme against damage or to secure that its efficiency for flood defence purposes is not impaired.

(5) Any specified work, and all protective works required by the Agency under paragraph (4) above, shall be carried out to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the carrying out of such works.

(6) The Company shall give 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 the date on which it is first brought into use.

(7) Any difference arising between the Company and the Agency under this article (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 or, in default of agreement, by the President of the Institution of Civil Engineers.

(8) The preceding provisions of this article shall apply in relation to works or dredging licensed by the Company under this Order to be carried out by a person other than the Agency, as they apply to a specified work constructed by the Company; and, accordingly, references in those provisions to the Company shall be construed as including references to the holder of the relevant licence.

Signed by authority of the Secretary of State for Transport

*Glenda Jackson*  
Parliamentary Under Secretary of State  
Department of the Environment, Transport and  
the Regions

8th December 1997

## REGULATION OF THE HARBOUR AND THE HARBOUR PREMISES

PART I:  
PRELIMINARY*Interpretation*

## 1. In this Schedule—

“Beacon E” means the point on the Outer Breakwater at Latitude 50° 34.8' N, Longitude 002° 24.8' W;

“the Collision Regulations” means regulations for the prevention of collisions made under sections 85 and 86 of the Merchant Shipping Act 1995;

“the controlled area” means the area of water within the inner harbour bounded by the following imaginary line—

- (a) drawn 325° (true) for 1,050 metres from the eastern extremity of the Inner Breakwater;
- (b) then drawn 251° (true) for 900 metres;
- (c) then drawn 180° (true) to the north-east corner of the Phoenix Pier;
- (d) then drawn from the south-east corner of the Phoenix Pier 150° (true) for 280 metres to the western dolphin off Castletown Slipway;
- (e) then drawn to the western edge of Castletown Slipway at the level of high water;

“fairway” means either of the main fairways or any other area designated as a fairway by the Company in a general direction;

“goods” means all articles and merchandise of every description and includes fish, livestock and animals;

“owner” when used in relation to goods includes any consignor, consignee, shipper or agent for the sale, receipt, custody, loading or unloading and clearance of those goods and includes any other person in charge of the goods and his agent in relation thereto; and when used in relation to a vessel includes any part-owner, broker, charterer, agent or mortgagee in possession of the vessel or other person or persons entitled for the time being to possession of the vessel;

“power-driven vessel” includes any vessel propelled by machinery;

“property” means any property whether real or personal;

“quay” means any quay, wharf, jetty, dolphin, landing stage or other structure used for berthing or mooring vessels, and includes any pier, bridge, roadway or footway immediately adjacent and affording access thereto;

“seaworthy” in relation to a vessel means that the vessel with its master and crew is capable, having regard to any intended movement of the vessel within or through the harbour, of being navigated or manoeuvred safely;

“under way” in relation to a vessel means a vessel not at anchor, made fast to the shore or aground; and

“whistle” means any vessel’s whistle or siren.

*Application*

2. The provisions of this Schedule shall have effect in addition to any general direction or any special direction given by the Company or the harbour master, so far as they are consistent therewith, but they shall be subject to the provisions of Schedule 2 to this Order.

**PART II:  
NAVIGATION**

*Vessel movements*

3. The master of a vessel other than a small vessel shall give prior notice to the harbour master or his agent of the vessel's arrival at, departure from or movement within, the harbour.

*Declaration of particulars of vessel*

4. The master of a vessel arriving at the harbour shall, if required by the harbour master, furnish to him a declaration in the form to be obtained from him containing a correct statement of the tonnage and draught of the vessel, its last port of call, name and address of owner, destination, and particulars of any cargo and passengers.

*Vessels to be navigated with care and caution*

5. The master of a vessel navigating in the harbour shall navigate the vessel with such care and caution and at such speed and in such manner as not to endanger the lives of, or cause injury to, persons or damage to property and as not to obstruct or prejudice the navigation, manoeuvring, loading or discharging of vessels or cause unnecessary damage to moorings, the banks of the harbour or other property.

*Speed of vessels*

6.—(1) Subject to sub-paragraph (2) below, the master of a power-driven vessel other than a power boat shall not, except and in accordance with the prior permission in writing of the harbour master, cause or permit the vessel to proceed at a speed greater than 12 knots through the water when navigating—

- (a) within the inner harbour; and
- (b) in the approaches thereto north of a line drawn 048° (true) from "D" Head.

(2) The master of a power-driven vessel shall not, except and in accordance with the prior permission in writing of the harbour master, cause or permit the vessel to proceed at a speed greater than 6 knots through the water in the following areas—

- (a) in Newton's Cove, west of a line drawn 026° (true) from Torpedo Pier Light to the northern limit of the harbour;
- (b) within 150 metres of the breakwaters, except as required to pass through the main fairways;
- (c) in the inner harbour—
  - (i) west of a line drawn 026° (true) from the light structure (New Channel Beacon) situated at Latitude 50° 34.87' N, Longitude 002° 27.61' W to Torpedo Pier Light;
  - (ii) south of a line drawn 119° (true) from New Channel Beacon to the light on the northern corner of Queen's Pier; and

(iii) south of a line drawn 251° (true) from Beacon E on the Outer Breakwater.

(3) For the purposes of sub-paragraph (1) above “power boat” means a power-driven vessel of less than 10 metres in length.

(4) This paragraph is without prejudice to paragraph 5 above and the Collision Regulations.

#### *Small vessels*

**7.—**(1) The master of a small vessel which is not confined to a fairway shall not make use of the fairway so as to cause obstruction to other vessels which can navigate only within the fairway; and when navigating across a fairway or through an entrance to the inner harbour, he shall do so by the shortest possible route that will avoid such obstruction.

(2) The master of a small vessel shall not hamper the safe passage of any vessel greater than 20 metres in length which is in, entering or leaving a fairway or which is under way within the inner harbour.

#### *Outgoing vessels to have priority*

**8.** Subject to paragraph 7(2) above, outgoing vessels shall have priority of passage in the main fairways over incoming vessels, and no vessel proceeding inward shall enter either of the main fairways until any vessel proceeding outwards through that fairway has passed out.

#### *Vessels not to make fast to aids to navigation*

**9.** The master of a vessel shall not make fast the vessel to or knowingly cause or permit the vessel to lie against any buoy, beacon or mark used for navigational purposes.

#### *Notification of accidents and deficiencies, etc.*

**10.—**(1) The master of a vessel which—

- (a) has been involved in a collision with any vessel or property, or has been sunk or grounded or become stranded, in the harbour;
- (b) is within or about to enter the harbour and by reason of accident, fire, defect or otherwise is in such a condition as to affect its safe navigation or to give rise to danger to other vessels or property; or
- (c) in any manner gives rise to an obstruction to a fairway,

shall give immediate notice of that fact to the harbour master and (as soon as practicable thereafter) provide the harbour master with full details in writing.

(2) Where the condition of a vessel is such that it is not or may not be seaworthy, the master shall not move the vessel except to clear the fairway or to moor or anchor in safety, otherwise than with the permission and in accordance with the directions of the harbour master.

(3) The harbour master may mark any vessel the subject of a notice given to him under sub-paragraph (1) above in any manner he considers appropriate.

#### *Vessels to have competent helmsman*

**11.—**(1) Subject to sub-paragraph (2) below, the master of a vessel shall ensure that it is steered at all times by a person competent to do so; and no automatic devices or equipment shall be used for steering purposes unless attended by a competent helmsman.

(2) The requirement of sub-paragraph (1) above to ensure that a vessel is steered at all times by a person competent to do so shall not apply if a person steering a vessel is undergoing training, so long as—

- (a) that person is being supervised on board the vessel by such a competent person; or
- (b) that person is steering the vessel in such part of the harbour as may be designated by the harbour master as suitable for training purposes.

(3) No person under the age of 16 years shall steer or navigate within the harbour any power-driven vessel of over 10 horsepower unless that person is—

- (a) in possession of an appropriate Royal Yachting Association or equivalent qualification; or
- (b) accompanied by a person aged 18 years or over.

#### *Master to remain on bridge*

**12.** The master of a power-driven vessel under way shall either—

- (a) be on the bridge or at the control position of the vessel; or
- (b) ensure that there is on the bridge or at the control position a member of the crew who is capable of taking charge of the vessel and, when a pilot is on board, is capable of carrying out the pilot's directions for the conduct of the vessel.

#### *Prohibition on navigation*

**13.** Except with the prior permission of the harbour master, no vessel shall enter, or navigate within, the controlled area.

#### *Use of whistles*

**14.** No person shall use a whistle within the harbour except—

- (a) as a signal of distress;
- (b) to prevent collision;
- (c) in the case of fog; or
- (d) with the prior permission of the harbour master, for the purpose of—
  - (i) the management of a race or any similar event;
  - (ii) the training of a person in the use of a small vessel; or
  - (iii) testing the whistle.

#### *Anchorage*

**15.—(1)** No vessel shall anchor—

- (a) within 100 metres of the line of any cable or pipe laid down in the harbour, when such line is indicated by posts or other discernible marks on shore, in a general direction or on the Admiralty Charts; or
- (b) within 150 metres of any breakwater.

(2) Without prejudice to sub-paragraph (1) above, if at any time the anchor of any vessel hooks any moorings, electric cable, moorings of buoys, or any pipe, the master of the vessel shall forthwith give notice thereof to the harbour master and shall, if it is safe and practicable, await his instruction before proceeding to clear the same.

*Obstruction of main fairways*

**16.** Except with the permission of the harbour master, no vessel shall lie or be moored, anchored, grounded, deposited or run ashore in the main fairways.

*Shipkeepers*

**17.—(1)** No vessel compelled or allowed to anchor in or near the main fairways, any other fairway or approaches to the controlled area, shall be left at any time without a shipkeeper.

(2) For the purposes of sub-paragraph (1) above, a vessel is anchored near the main fairways, any other fairway or approaches to the controlled area if she could, at the extent of her swing, and having regard to prevailing or anticipated weather conditions, and the potential to drag her anchor, infringe on the fairway or approaches to the controlled area, as the case may be.

**PART III:**

**BERTHING AND MOORING**

*Provision of proper fenders*

**18.** The master and the owner of a vessel shall ensure that it is provided with a sufficient number of fenders adequate for the size of the vessel; and, when berthing and leaving or lying at a quay or against other vessels, the master shall cause the vessel to be fended off from that quay or those other vessels so as to prevent damage to that quay, those other vessels or any other property.

*Vessels to be properly berthed*

**19.** The master of a vessel shall at all times keep his vessel properly and effectively moored when berthed or lying at any quay.

*Vessels adrift*

**20.** The master of a vessel which parts from its moorings shall, as soon as possible, report the same to the harbour master.

*Access to and egress from vessels*

**21.** The master and the owner of a vessel (other than a small vessel) while berthed alongside a quay shall provide and maintain a sufficient, safe and proper gangway for the access and egress of all persons having lawful business on the vessel and shall during the hours of darkness provide sufficient lighting to illuminate the whole length of the gangway.

*Sufficiency of crew*

**22.—(1)** Except with the permission of the harbour master, the master of a vessel other than a small vessel shall at all times when that vessel is within the harbour ensure that his vessel is capable of being safely moved and navigated and that there are sufficient crew or other competent persons readily available—

- (a) to attend to the vessel's moorings;

(b) to comply with any directions given by the harbour master for the unmooring, mooring and moving of the vessel; and

(c) to deal, so far as reasonably practicable, with any emergency that may arise.

(2) If any contract is entered into to secure compliance with sub-paragraph (1) above by persons other than the vessel's crew, the name and address of the person with whom the contract is entered into shall be disclosed to the harbour master.

#### *Vessels to be kept in a movable condition*

**23.**—(1) The master of a vessel, other than a small vessel lying at a recognised mooring or anchorage, shall not, except where his vessel is lying aground, take any steps to render his vessel incapable of movement without first notifying the harbour master and, subject as aforesaid, shall at all times keep his vessel so loaded and ballasted and in such condition that it is capable of being safely moved.

(2) Where a vessel is at any time not capable of being safely moved by means of its own propulsive machinery, the master or owner shall inform the harbour master forthwith and give to him any further information which the harbour master may reasonably require.

#### *Use of engines while vessel moored or berthed*

**24.** The master of a vessel which is moored at a quay or attached to any mooring device shall not permit the engines of his vessel to be worked in such a manner as to cause unnecessary injury or damage to the bed or banks of the harbour or to any other vessel or property.

#### *Vessels not to make fast to unauthorised objects*

**25.** No person shall make a vessel fast to any post, quay, ring, fender or any other thing or place not assigned for that purpose.

#### *Access across decks*

**26.** The master of a vessel alongside a quay or alongside any vessel already berthed within the harbour shall, if required so to do by the harbour master, give free access across the deck of his vessel for persons and goods to and from vessels berthed alongside his vessel.

#### *Lost anchor, cable or propeller*

**27.** The master of a vessel which has slipped or parted from or lost any anchor, chain, cable or propeller shall—

(a) as soon as reasonably practicable give to the harbour master notice thereof and, if possible, of the position of the anchor, chain, cable or propeller and, if the harbour master so directs, shall cause it to be recovered as soon as reasonably practicable;

(b) in the case of an anchor or propeller, leave a buoy to mark the position thereof if this is known.

**PART IV:**  
**GOODS AND ROAD TRAFFIC**

*Requirements as to handling and movement of goods in the harbour*

**28.**—(1) The owner of any goods loaded or discharged at the harbour shall ensure that the goods are removed therefrom as soon as practicable and in any case within 48 hours unless the Company otherwise agree.

(2) The owner of any goods shall comply with such directions as the Company may from time to time give for regulating the time, place and manner of discharging, loading or otherwise bringing into or removing those goods from the harbour premises.

*Precaution against goods, etc., falling into harbour waters or the Company's premises*

**29.** The master of a vessel and a person undertaking the loading of cargo into, or the discharging of cargo from, a vessel shall use or cause to be used such methods as the harbour master may direct for preventing any cargo, dunnage, ballast or other materials from falling or escaping into the waters of the harbour or onto the harbour premises.

*Obstruction or interference at harbour premises*

**30.** No person shall—

- (a) except with the permission of the Company, deposit or place on any part of the harbour premises any goods or park any vehicle so as to obstruct any road, building, mooring place, plant, machinery or apparatus or the access thereto; or
- (b) without lawful authority, use, work, move or tamper with any plant, machinery, equipment or apparatus at the harbour premises.

*Safe driving of vehicles*

**31.** No person shall drive or otherwise operate a vehicle in the harbour premises without due care and attention or without reasonable consideration for other persons using the harbour premises.

*Speed limit for vehicles*

**32.** No person shall allow a vehicle to proceed anywhere in the harbour premises at a speed greater than 10 miles per hour or at such other speed applicable to all or part of the harbour premises as may be specified by the Company in a notice conspicuously posted in or close to the place to which the limit relates.

*Supervision of vehicles*

**33.** A person having charge of a vehicle in the harbour premises shall at all times comply with any directions of the Company with respect to the loading, discharging, manoeuvring and removal thereof and shall not, without the permission of the Company—

- (a) leave the vehicle unattended anywhere within the harbour premises; or
- (b) take it into any shed or working area.

*Loads not to leak, spill or drop*

**34.**—(1) The owner, driver or other person having charge of a vehicle in the harbour premises shall not knowingly permit any substance to leak, spill or drop from the vehicle.

(2) This paragraph shall not apply to any spillage from a vehicle in which fish are being transported in bulk where that spillage could not have been reasonably prevented.

*Loads to be secured*

**35.** The owner, driver or other person having charge of a vehicle in the harbour premises shall ensure that any load carried thereon or therein is adequately supported and secured where appropriate and that it complies with all such statutory restrictions on the weight of goods to be so carried as are applicable on public roads.

*Refuelling etc. of vehicles*

**36.** No person shall within the harbour premises charge any vehicle with, or empty it of, fuel except with the permission of the Company or at a place designated by the Company for that purpose.

*Driving on weighbridges*

**37.** No person shall drive or otherwise operate a vehicle across any weighbridge within the harbour premises except for the purpose of weighing the vehicle.

*Accidents to be reported*

**38.** Any person driving or otherwise operating a vehicle involved in an accident in the harbour premises whereby any injury is caused to any person or any damage is caused to any property, shall stop the vehicle and report the accident to the Company and shall give his name and address to the Company.

**PART V:**

**GENERAL**

*Inspection facilities, etc., to be made available to harbour master*

**39.** The master of a vessel shall, so far as may be required by the harbour master in the exercise of his duties, afford the harbour master access to the vessel or any part thereof and provide all reasonable facilities for its inspection and examination.

*Navigation under influence of drink or drugs prohibited*

**40.** No person shall navigate any vessel in the harbour whilst under the influence of drink or drugs to such an extent as to be incapable of taking proper control of the vessel.

*Vessels not to be fumigated without permission*

**41.** The master or owner of a vessel shall not cause or permit it to be fumigated without the prior permission of the harbour master.

*Discharges into harbour prohibited*

**42.**—(1) No person shall discharge any matter or cause or permit any matter to be discharged into the waters or on to the bed of the harbour or place or cause or permit any matter or object to be placed so that it may fall, be blown, drift or flow into the harbour.

(2) The provisions of this paragraph shall not apply to—

- (a) the discharge or escape of any substance the discharge or escape of which is subject to the provisions of the Prevention of Oil Pollution Act 1971(y);
- (b) anything specifically authorised by, or by a consent given under, any other enactment.

*Fishing*

**43.**—(1) Any person fishing in the harbour shall comply with directions given to him by the harbour master.

(2) Subject to sub-paragraphs (4) and (5) below, no person shall fish—

- (a) in the main fairways;
- (b) in the controlled area;
- (c) within 150 metres of the harbour premises;
- (d) by trawl, nets or dredges within 100 metres of the line of any cable or pipe laid down in the harbour; and
- (e) with surface nets in the inner harbour, except with the written permission of the harbour master.

(3) No person shall fish in Newton’s Cove—

- (a) by trawl or dredges, west of a line drawn due north from “C” Head to the northern limit of the harbour; or
- (b) by nets west of a line drawn 026° (true) from Torpedo Pier Light to the northern limit of the harbour.

(4) With the written permission of the harbour master a person may lay and lift prawn and lobster pots at the following locations—

- (a) on and within 150 metres of the seaward side of the Inner Breakwater;
- (b) on and within 150 metres of the seaward side of the Outer Breakwater;
- (c) on and within 150 metres of the landward side of the Outer Breakwater between Beacon E and the South Ship Channel but excluding any area for the time being marked by buoys as set aside for a fish farm;
- (d) on and within 150 metres of the North-eastern Breakwater and the Northern Arm; and
- (e) within 150 metres of the harbour premises lying to the south of the Inner Breakwater.

(5) With the written permission of the harbour master a person may lay and lift prawn pots on and within 10 metres of the landward side of the Outer Breakwater between Beacon E and the southern side of the jetty at Fort Head, but excluding any area for the time being marked by buoys as set aside for a fish farm.

(6) No person shall cast or place any drift, trawl or other net in such a position as to be likely to become an obstruction or danger to any property including in particular, but without prejudice to the generality of the foregoing, any vessel or mooring.

(7) All surface set nets and such other apparatus and equipment which could impede surface navigation in the harbour shall be attended at all times.

(8) All markers used to indicate the position of fishing equipment shall be clearly marked with either the owner's name or boat registration number.

*No dragging or grappling without permission*

**44.** Without prejudice to paragraph 27 above, no person shall drag, dredge or grapple for any material or article, nor remove the same from the bed of the harbour, without the written consent of the harbour master save for the purpose of immediately recovering any article dropped overboard from a vessel.

*Vessels to have names marked on them*

**45.** The owner of a vessel which is not registered as a ship under Part II of the Merchant Shipping Act 1995 and marked accordingly shall ensure that the vessel is marked conspicuously with its name or other means of identification and harbour of origin (if any) unless exempted from this requirement by the Company.

*Abandonment of vessels prohibited*

**46.—(1)** No person shall abandon a vessel on the banks or shore of the harbour or on any of the breakwaters.

(2) For the purposes of sub-paragraph (1) above, a person who leaves a vessel on the banks or shore of the harbour or on any of the breakwaters in such circumstances or for such period that he may reasonably be assumed to have abandoned it shall be deemed to have abandoned it there unless the contrary intention is shown.

*Water-skiing, aquaplaning and similar activities*

**47.—(1)** No person shall engage or take part in water-skiing, aquaplaning or any similar activity

- (a) in the main fairways;
- (b) within 150 metres of the breakwaters;
- (c) south of a line drawn between Beacon E and a point on the shore at Latitude 50° 34.22' N, Longitude 002° 27.5' W (the Lattice Tower);
- (d) in the area west of lines drawn 127° (true) and 028° (true) from the light structure (New Channel Beacon) situated at Latitude 50° 34.87' N and Longitude 002° 27.61' W; and
- (e) in Newton's Cove, west of a line starting at a point on the northern side of the Northern Arm 1,120 metres from the eastern extremity of "C" Head and drawn 028° (true) to the northern limit of the harbour.

(2) Without prejudice to sub-paragraph (1) above, no person shall engage or take part within the harbour in water-skiing, aquaplaning or any similar activity except in areas designated by the Company and with the written permission of the harbour master, given either specifically or generally, and subject to such other reasonable terms and conditions as the harbour master may specify.

(3) A master of a vessel, whilst using the vessel for the purpose of towing a water-skier or a person aquaplaning, shall have on board at least one other person capable of taking charge of the vessel and of giving such assistance as may be reasonably required during the towing and in the recovery of the water-skier or person aquaplaning and shall carry—

- (a) for each person on board or being towed a life jacket or a personal buoyancy aid;

- (b) two hand-held distress signals and a fire extinguisher; and
- (c) for each person water-skiing or aquaplaning, a rescue quoit with line or other sufficient hand-thrown rescue device.

*Para-kiting, para-scending and similar activities*

**48.** No person shall engage or take part in para-kiting, para-scending or any similar activity in any part of the harbour except with the written permission of the Company given either specifically or generally and only in such areas as may be designated by the Company and in accordance with such reasonable terms and conditions as the Company may impose.

*Diving and underwater swimming*

**49.**—(1) Subject to sub-paragraph (2) below, no person, other than a duly authorised employee, contractor or agent of the Company, shall swim underwater or dive in the areas specified in paragraph 43(2)(a), (b) and (c) above.

(2) With the written permission of the Company a person may dive and swim underwater—

- (a) seawards from the seaward side of the Inner Breakwater (including the South Ship Channel entrance);
- (b) seawards from the seaward side of the Outer Breakwater but remaining clear of the main fairway concerned;
- (c) within 50 metres of the landward side of the Outer Breakwater but remaining clear of the main fairway concerned for the purpose of diving on the wreck adjacent to Beacon E, commonly known as the “Enecuri” or “Spaniard”; and
- (d) on the wrecks along the landward side of the Outer Breakwater between Beacon E and “D” Head.

(3) An application for permission to dive the wrecks mentioned in sub-paragraph (2)(d) above shall be made at least 2 working days before the day on which it is desired to carry out the dive in question and the permission, if given, shall relate to that particular dive alone.

- (a) Subject to (b) below, the Company shall only give permission to dive and swim underwater for the purposes of sub-paragraph (2) above to a person who is a member of a club or association which is either a registered branch of the British Sub-Aqua Club, a registered club of the Sub-Aqua Association, a Professional Association of Diving Instructors registered diving school or a member of any other recognised and competent organisation.
- (b) Permission for the purposes of sub-paragraph (2) above may be given by the Company to a club or association mentioned in (a) above for the benefit of those of its members specified in the permission.

(5) Permission given under the said sub-paragraph to dive or swim underwater shall not authorise any person to land or set foot on the Inner Breakwater or the Outer Breakwater.

(6) Any permission granted under the said sub-paragraph may be given subject to such reasonable terms and conditions (including as to the payment of charges) as the Company may consider appropriate, and any person diving or swimming underwater in the harbour shall comply with any such terms and conditions that are imposed, and with any directions given to him by the harbour master.

*Regattas, races and similar events*

**50.**—(1) The person responsible for organising any regatta, race, procession, pageant or any other similar event, or any part of any such event in which a number of vessels is expected to participate or to assemble within the harbour, shall supply to the harbour master such information with regard to the event as the harbour master may reasonably require and shall seek the prior consent of the harbour master to the holding of the event or the part of such event within the harbour, which shall not be unreasonably withheld.

(2) No person shall organise or conduct any of the events referred to in sub-paragraph (1) above except on such courses, at such times and in accordance with such other conditions as the harbour master may reasonably specify for the purposes of this paragraph.

*Aids to navigation*

**51.** No person shall erect, exhibit, alter, tamper with or remove any light, fog signal, buoy, beacon, mark, radar reflector or other object within or adjoining the harbour used as an aid to navigation in the harbour without the written permission of the Company.

*Assistance to fire and other services*

**52.** The master of a vessel shall give every reasonable facility and assistance to the fire, police, ambulance and other emergency services for dealing with, alleviating or preventing any emergency.

*Fire precautions*

**53.** The master of a vessel shall take all reasonable precautions for the prevention of accidental fire or accidents by fire.

*Obstruction of officers of the Company*

**54.** No person shall intentionally obstruct any officer or employee of the Company in the execution of his duties.

*Meetings*

**55.**—(1) Except with the consent of the harbour master, no person shall within the harbour premises—

- (a) take part in any general meeting; or
- (b) gather together with other persons, or deliver any address to an audience,

whereby any work or business at the harbour or the control, management or use of the harbour is, or likely to be, obstructed, impeded or hindered.

(2) This paragraph shall not apply to any meeting held for the purposes of, or in connection with requirements under, the Health and Safety at Work etc. Act 1974<sup>(z)</sup> or any regulations made under that Act.

*Unauthorised trading prohibited*

**56.** No person shall engage by way of trade, in buying or selling any goods or property in the harbour premises without the written consent of the Company.

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(z) 1974 c. 37.

#### *Landing on breakwaters*

**57.** No person may at any time land on the breakwaters except with the permission in writing of the harbour master and in accordance with any conditions attached thereto.

#### *Firearms*

**58.—**(1) Except with the prior consent of the harbour master no firearm or air-gun shall be discharged from any vessel within the harbour or from the harbour premises otherwise than by a member of a police force or a member of Her Majesty's naval or military forces properly authorised to do so in the course of his duty.

(2) No ship's gun on board any vessel lying within the harbour shall be loaded, except in so far as may be necessary from time to time for training personnel in the loading and unloading of the gun or for testing its mechanism, nor shall any such gun be discharged except as a signal of distress.

#### *Silencers*

**59.** No person, being the master of a vessel propelled by an internal combustion engine, shall use that vessel in the harbour unless the engine is fitted with a silencer or such other apparatus suitable and sufficient for reducing as far as may be reasonable the noise caused by the escape of the exhaust gases from the engine.

#### *Penalties*

**60.—**(1) Any person who contravenes or otherwise fails to comply with any of the provisions of this Schedule, or any condition, requirement or prohibition imposed by the Company or the harbour master in the exercise of the powers conferred upon them or him by this Schedule, shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph 40 above;
- (b) to a fine not exceeding level 3 on the standard scale in any other case.

(2) Where the commission by any person of an offence under this Schedule is due to the act or default of some other person, that other person shall be guilty of an offence; and that other person may be charged with, and convicted of, the offence by virtue of this paragraph, whether or not proceedings for the offence are taken against any other person.

(3) In any proceedings for an offence under this Schedule, it shall be a defence for the person charged to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or
- (b) that he had a reasonable excuse for his act or failure to act.

(4) If, in any case, the defence provided by sub-paragraph (3)(a) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the Company a notice in writing giving such information identifying, or assisting in the identification of, that person as was then in his possession.

## PROTECTIVE PROVISIONS

## PART I:

## DEFENCE EVALUATION AND RESEARCH AGENCY

## (SEA SYSTEMS SECTOR)

*Interpretation*

## 1. In this Part of this Schedule—

- (a) “the Acoustic Range Building” means the building located on the seaward side of the Northern Arm at Latitude 50° 35.97' N, Longitude 002° 26.6' W (150 metres north-west of the Vernon Building);
- (b) “the Distant Range Building” is the building on and co-located with the Torpedo Firing Point on the North-eastern Breakwater at Latitude 50° 35.39' N, Longitude 002° 25.36' W;
- (c) “the Short Range Building” is the building situated on Torpedo Pier on the Northern Arm;
- (d) “the Vernon Building” (formerly the Admiralty Magnetic and Calibration Station) means that building located on the Northern Arm at Latitude 50° 35.93' N, Longitude 002° 26.48' W;
- (e) “the Vernon Building Jetty” means the jetty on the seaward side of the Northern Arm adjacent to the Vernon Building; and
- (f) “the Vernon Landing Stage” means the landing Stage on the landward side of the Northern Arm adjacent to the Vernon Building.

*Fishing, anchoring and mooring*

## 2.—(1) Subject to sub-paragraph (2) below, no person shall fish, anchor or moor within—

- (a) 350 metres of the landward side of the Northern Arm between the Vernon Landing Stage and Torpedo Pier;
- (b) 250 metres of that side of the Northern Arm between Torpedo Pier and the level of high water at the Northern Arm’s landward end;
- (c) 150 metres to seaward of the Vernon Building Jetty;
- (d) the acoustic range area, being a rectangular area extending 25 metres each side of the Acoustic Range Building and extending 150 metres to seaward of the Northern Arm; and
- (e) 150 metres of the Distant Range Building.

(2) With the written permission of the Company (which shall not be given without the written consent of the Secretary of State for Defence) a person may lay and lift prawn pots at the following locations—

- (a) on and within 10 metres of the landward side of the Northern Arm in the area specified in sub-paragraph (1)(a) above unless Flag Alfa is flying from the Short Range Building;
- (b) within 10 metres of the seaward side of the Northern Arm in the areas specified in sub-paragraphs (1)(c) and (1)(d) above unless Flag Alfa is flying from the Vernon Building or the Acoustic Range Building; and

- (c) within 10 metres of the seaward side of the North-eastern Breakwater in the area specified in sub-paragraph (1)(e) above unless Flag Alfa or the International Code Group November Alfa is flying from the Distant Range Building.

*Diving and underwater swimming*

- 3.—(1) Subject to sub-paragraph (2) below, no person shall swim underwater or dive within—
- (a) 150 metres of the North-eastern Breakwater;
  - (b) 150 metres of the seaward side of the Northern Arm;
  - (c) 150 metres of the landward side of the Northern Arm between “C” Head and the Vernon Landing Stage; and
  - (d) the areas specified in sub-paragraphs 1(a) and 1(b) of paragraph 2 above.
- (2) With the permission of the Company (which shall not be given without the written consent of the Secretary of State for Defence) a person may dive and swim underwater—
- (a) from either side of the North-eastern Breakwater but remaining clear of the main fairways and not within 150 metres of the Distant Range Building; and
  - (b) from either side of the Northern Arm from “C” Head to a point 150 metres south-east of the Vernon Building, but remaining clear of the main fairway concerned.
- (a) Subject to sub-paragraph (b) below, the Company shall only give permission to dive and swim underwater for the purposes of sub-paragraph (2) above to a person who is a member of a club or association which is either a registered branch of the British Sub-Aqua Club, a registered club of the Sub-Aqua Association or a Professional Association of Diving Instructors registered diving school.
  - (b) Permission for the purposes of this paragraph may be given by the Company to a club or association mentioned in (a) above for the benefit of those of its members specified in the permission.
- (4) Any permission given under this paragraph to dive or swim underwater shall not authorise any person to land or set foot on the North-eastern Breakwater or the Northern Arm.

## PART II:

### DEFENCE EVALUATION AND RESEARCH AGENCY

#### (TEST AND EVALUATION RANGES SECTOR)

*Interpretation*

4. In this Part of this Schedule—
- (a) “the Grove Point Building” means the building co-located with the Coastguard Building located at Latitude 50° 32.9' N, Longitude 002° 25.1' W; and
  - (b) “the Vernon Building” has the same meaning as in Part I of this Schedule.

*Fishing, anchoring and mooring*

- 5.—(1) Subject to sub-paragraph (5) below, no person shall fish, anchor or moor—
- (a) within that part of an imaginary rectangle constructed 150 metres from the centre of the outer buoys marking the fixed degaussing range situated at or near a point at Latitude 50°

36.3' N, Longitude 002° 26.12' W as lies inside the harbour, and within a similar rectangle from the centre of the outer buoys marking the mobile degaussing range that may from time to time be situated at or near a point at Latitude 50° 36.28' N, Longitude 002° 24.8' W;

- (b) within the area used as a noise range bounded by the points at—
  - (i) Latitude 50° 34' N, Longitude 002° 24.4' W;
  - (ii) Latitude 50° 34' N, Longitude 002° 24.0' W;
  - (iii) Latitude 50° 33.6' N, Longitude 002° 24.0' W; and
  - (iv) Latitude 50° 33.6' N, Longitude 002° 24.4' W;
- (c) within 100 metres of any cables serving the ranges specified in this sub-paragraph; and
- (d) in any part of the harbour when it would obstruct vessels exhibiting International Code “PP” at the yardarm when making degaussing or noise range runs over the ranges and areas specified in this sub-paragraph.

(2) No person shall fish by nets, anchor or moor in Newton’s Cove west of a line drawn due north from “C” Head to the northern limit of the harbour when the fixed degaussing range specified in sub-paragraph (1)(a) above is in use, as indicated by an orange flag flying from the Vernon Building.

(3) Subject to sub-paragraph (5) below, no person shall fish by trawl, nets or dredges, anchor or moor within the area of water bounded by the following imaginary lines—

- (a) a line drawn from a point at Latitude 50° 36.42' N, Longitude 002° 25.2' W, to a point at Latitude 50° 36.42' N, Longitude 002° 24.5' W (“point A”);
- (b) a line drawn from point A to a point at Latitude 50° 36.00' N, Longitude 002° 24.5' W (“point B”); and
- (c) a line drawn from point B to a point at Latitude 50° 36.00' N, Longitude 002° 25.2' W,

when the mobile degaussing range specified in sub-paragraph (1)(a) above is being established or is in use, as indicated by an orange flag flying from the Vernon Building.

(4) No person shall fish, anchor or moor in the area of water bounded by the seaward side of the Outer Breakwater and the Inner Breakwater, the level of high water on the eastern side of the Isle of Portland, and the following imaginary lines—

- (a) a line drawn from Fort Head to a point at Latitude 50° 35.08' N, Longitude 002° 23.84' W (the eastern limit of the harbour);
- (b) a line drawn from that point to a point at Latitude 50° 32.6' N, Longitude 002° 23.84' W; and
- (c) a line drawn from that point to a point on the shore (Durdle Pier) at Latitude 50° 32.62' N, Longitude 002° 24.97' W,

when the noise range specified in sub-paragraph (1)(b) above is in use, which shall be indicated by an orange flag flying from the Grove Point Building.

(5) Sub-paragraph (3) above, and the provisions of sub-paragraph (1)(a) above relating to the mobile degaussing range, shall only apply after 24 hours' notice of the establishment of that range has been given by the Company in a general direction.

#### *Diving and underwater swimming*

6.—(1) Subject to sub-paragraph (2) below, no person shall swim underwater or dive in the ranges and areas specified in paragraph 5(1) above or within 100 metres of any buoys or cables associated with those ranges and areas.

(2) Sub-paragraph (1) above shall only apply in relation to the mobile degaussing range after notice of the establishment thereof has been given by the Company in accordance with paragraph 5(5) above.

### PART III: ROYAL NAVAL AIR STATION

#### *Interpretation*

7. In this Part of this Schedule—

“exempt person” means—

- (a) any person in the service of—
  - (i) Her Majesty’s naval, military or air forces;
  - (ii) a Government Department;
  - (iii) a police force or other emergency service; or
  - (iv) the Commissioners of Customs and Excise, whilst in the execution of his duty; or
- (b) a contractor or his employee duly authorised by the Ministry of Defence;

“exempt vessel” means any vessel belonging to or used by an exempt person;

“the prohibited area” means the area of water within 100 metres of the level of high water between a point north of the Lattice Tower at Latitude 50° 34.22' N, Longitude 002° 27.5' W and a point at Latitude 54° 34.09' N, Longitude 002° 26.8' W (the eastern boundary of the flight path for the Royal Naval Air Station, Portland); and

“the restricted area” means the area of water within the following imaginary lines—

- (a) a line drawn from a point on the shore at Latitude 50° 34.20' N, Longitude 002° 27.15' W to a point at Latitude 50° 34.70' N, Longitude 002° 26.78' W (“point A”);
- (b) a line drawn from point A to a point at Latitude 50° 34.57' N, Longitude 002° 26.495' W (“point B”);
- (c) a line drawn from point B to a point at Latitude 50° 34.82' N, Longitude 002° 26.32' W (“point C”);
- (d) a line drawn from point C along the arc of a sector of a circle of radius 1,500 metres (the centre thereof being a point on the shore) to a point at Latitude 50° 34.63' N, Longitude 002° 25.92' W (“point D”); and
- (e) a line drawn from point D to a point at Latitude 50° 34.09' N, Longitude 002° 26.80' W, excluding any area of water within any part of the prohibited area.

#### *Prohibited area*

8. No vessel other than an exempt vessel shall, except with the prior permission of the Company (which shall not be given without the written consent of the Secretary of State for Defence), enter, navigate, anchor or moor within the prohibited area, and no person other than an exempt person shall swim, dive or fish within that area or otherwise enter it except with the like permission.

9. Except with the direction of the Secretary of State for Defence the provisions of articles 8, 9, 10, 11, 15, 16, 18, 31 and 50 of this Order shall not apply in relation to the prohibited area, or to any exempt person or exempt vessel within that area.

*Restricted area*

**10.** No vessel other than an exempt vessel shall, except with the prior permission of the Company (which shall not be given without the written consent of the Secretary of State for Defence), anchor or moor within the restricted area.

**11.** Except with the direction of the Secretary of State for Defence the provisions of article 10 of this Order shall not apply to the restricted area.

**PART IV:  
GENERAL PROVISIONS**

*Marking prohibited, restricted and constrained areas*

**12.** The Secretary of State for Defence may with the approval of the Trinity House erect or place, maintain, renew, alter, discontinue or remove such lights, buoys, beacons or other marks (and any structure required to house the same) and take such other steps as may be necessary for the purpose of indicating to vessels or persons using the harbour the extent of the various areas referred to in this Schedule where activities of those vessels or persons are prohibited, restricted or constrained.

*Enforcement*

**13.—(1)** The Secretary of State for Defence may provide and use in the harbour such vessels as are necessary and appropriate to secure compliance by persons using the harbour with the provisions of this Schedule, but all such vessels and the masters thereof shall be subject to any general or special direction given by the Company or the harbour master.

(2) The Secretary of State for Defence shall have power to institute criminal proceedings against any person alleged to have contravened any provision of this Schedule.

*Consents and directions*

**14.** Consents and directions given by the Secretary of State for Defence under this Schedule may be subject to such terms and conditions as he considers necessary and appropriate.

*Penalties*

**15.—(1)** Any person who contravenes or otherwise fails to comply with any of the provisions of this Schedule, or any condition, requirement or prohibition imposed by the Secretary of State for Defence in the exercise of the powers conferred upon him by this Schedule, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where the commission by any person of an offence under this Schedule is due to the act or default of some other person, that other person shall be guilty of an offence and that other person may be charged with, and convicted of the offence by virtue of this paragraph, whether or not proceedings for the offence are taken against any other person.

(3) In any proceedings for an offence under this Schedule, it shall be a defence for the person charged to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence; or

(b) that he had a reasonable excuse for his act or failure to act.

(4) If, in any case, the defence provided by sub-paragraph (3)(a) above involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the Secretary of State for Defence a notice in writing giving such information identifying, or assisting in the identification of, that person as was then in his possession.

### *Cessation*

**16.**—(1) Part I of this Schedule shall cease to apply upon the cessation of use of the North-eastern Breakwater and the Northern Arm for defence research purposes by the Defence Evaluation and Research Agency or its successors and the occurrence of either of the events specified in sub-paragraph (4) below.

(2) Part II of this Schedule shall cease to apply upon the cessation of use of the areas and ranges specified in paragraph 5(1) above for defence research purposes by the said Agency or its successors.

(3) Part III of this Schedule shall cease to apply upon closure of the Royal Naval Air Station, Portland and, thereafter, the occurrence of either of the events specified in sub-paragraph (4) below.

(4) The events mentioned in sub-paragraphs (1) and (3) above are, in relation to Part I or Part III of this Schedule, as the case may be—

- (a) the coming into force of byelaws made by the Company under article 15 of this Order declared to be in substitution for some or all of the provisions of that Part; or
- (b) the first publication in accordance with sub-paragraph (5) below of a declaration by the Company that they do not intend to make any byelaws in substitution therefor.

(5) A declaration made in the terms referred to in sub-paragraph(4)(b) above shall be published by the Company in the London Gazette and in a newspaper circulating in the locality of the harbour.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, made on the application of Portland Port Limited (“the Company”), establishes the Company as the statutory harbour authority for Portland Harbour in the place of the Queen’s Harbour Master for the Dockyard Port of Portland; defines the limits of jurisdiction of the Company and confers upon them powers of control, operation, management and regulation in relation to the harbour and the harbour premises.

The Order provides for the development and for the safe and efficient operation of a commercial port; for harbour conservancy and maintenance; for the management and encouragement of recreation and commerce; and for the conservation of the natural beauty of the harbour and its flora and fauna.