
WELSH STATUTORY INSTRUMENTS

2011 No. 1565

The Saundersfoot Harbour Empowerment Order 2011

PART 6

CONTROL OF WORKS AND DREDGING

Restriction of works and dredging

41.—(1) Subject to paragraph (3), no person other than the Commissioners is permitted, in the harbour, to—

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

unless that person is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor 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 43 of this Order or, as the case may require, article 44 of this Order.

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

(3) Nothing in this article applies 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 is 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

42.—(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), a statutory undertaker must 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 Commissioners and has supplied the Commissioners with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker must inform the Commissioners of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies must be carried out subject to any directions which may from time to time be given by the Commissioners 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 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

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

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

- (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 the applicant to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the licence is granted.

(3) In granting a licence, the Commissioners may require modifications in the plans, sections and particulars submitted to them by the applicant.

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

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

(6) If the Commissioners decide to grant a works licence they must give notice of their decision to the applicant.

(7) Where the Commissioners refuse to grant a works licence which has been applied for they must give reasons in writing for their refusal.

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

(9) If within three months from the date of making an application under paragraph (2) (or such longer period as may be agreed between the applicant and the Commissioners) the Commissioners do not notify to the applicant of their decision whether to grant a works licence, they will be deemed to have refused the application.

(10) Articles 46 to 51 of this Order 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 Commissioners as respects tidal works with all references to the Commissioners being substituted by references to the holder of the works licence.

(11) The grant of a licence under this article has effect for the purposes of article 41 and confers no other authority for the carrying out of the operations covered by the licence.

(12) In the carrying out of operations in pursuance of a works licence, the holder of the licence must 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

44.—(1) The Commissioners 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 must be made in writing to the Commissioners and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations in respect of which the application is made.

(3) In granting a licence, the Commissioners may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) Paragraphs (4) to (9) and (12) of article 43 of this Order apply in relation to a dredging licence as they apply in relation to a works licence.

(5) The grant of a licence under this article has effect for the purpose of article 41 and confers no other authority for the carrying out of the operations covered by the licence.

(6) Unless otherwise agreed by the Commissioners any materials (other than wreck within the meaning of section 255(1) of the Merchant Shipping Act 1995⁽¹⁾) taken up or collected by means of dredging in pursuance of a dredging licence must, in so far as they are not the property of the Commissioners before being taken up and collected, but subject to the provisions of article 43, become the property of the Commissioners, and the Commissioners may use, appropriate or dispose of any such material.

Appeals in respect of works or dredging licences

45.—(1) Where—

- (a) the Commissioners have refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or
- (b) the Commissioners have granted such a licence upon terms or conditions or has required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant is aggrieved by the Commissioners' decision as to such terms or conditions, or as to such modifications;

the applicant may within 28 days from the date on which the Commissioners give notice of their decision or the date on which they are, under article 43 or 44, deemed to have refused the application, as the case may be, appeal to the Welsh Ministers.

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

(3) A person who appeals to the Welsh Ministers under this article must at the same time send a copy of the statement of appeal to the Commissioners and the Commissioners must as soon as practicable thereafter furnish the Welsh Ministers with all relevant documents, and may within 28 days from the receipt of the statement of appeal provide the Welsh Ministers with their observations on the appeal.

(4) On appeal under this article the Welsh Ministers may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions or modifications of plans, sections and particulars.

(1) 1995 c. 21.

(5) The Commissioners must give effect to any decision or requirement given or made by the Welsh Ministers under paragraph (4).

Tidal works not to be executed without approval of the Welsh Ministers

46.—(1) A tidal work must not be constructed, reconstructed, extended, altered, enlarged, replaced or re-laid except in accordance with plans and sections approved by the Welsh Ministers and subject to any conditions and restrictions imposed by them before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, altered, enlarged, replaced or re-laid in contravention of paragraph (1) or of any condition or restriction imposed under the said paragraph—

- (a) the Welsh Ministers may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Welsh Ministers may execute the works specified in the notice; or
- (b) if it appears to the Welsh Ministers urgently necessary so to do, the Welsh Ministers may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Welsh Ministers in doing so is recoverable from the Commissioners.

Lights on tidal works during construction

47.—(1) The Commissioners must at or near a tidal work during the whole time of its construction, extension, enlargement, alteration, replacement or relaying, 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 Welsh Ministers from time to time direct.

(2) If the Commissioners fail to comply with any direction given under paragraph (1), they are 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

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

(2) If the Commissioners fail to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction under it, the Commissioners are 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

49.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Welsh Ministers may by notice in writing require the Commissioners at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Welsh Ministers think proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such 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 Welsh Ministers may include that part of the work, or any portion of it, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Welsh Ministers may execute the work specified in the notice and any expenditure incurred by them in doing so is recoverable from the Commissioners.

Survey of tidal works

50. If the Welsh Ministers deem it expedient to do so, they may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Welsh Ministers in any such survey and examination is recoverable from the Commissioners.

Permanent lights on tidal works

51.—(1) After the completion of a tidal work the Commissioners must at its outer extremity 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 Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1) they are 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.