
STATUTORY INSTRUMENTS

1994 No. 3162

HARBOURS, DOCKS, PIERS AND FERRIES

The Gloucester Harbour Revision Order 1994

Made - - - - 9th December 1994

Coming into force - - 23rd December 1994

Whereas the Gloucester Harbour Trustees have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas objections to the application made pursuant to paragraph 3(a) of Schedule 3 to the said Act(2) have been withdrawn;

And whereas the Secretary of State for Transport 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(3)), in exercise of the powers conferred by that section and now vested in him(4), and of all other powers enabling him in that behalf, hereby makes the following Order:—

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Gloucester Harbour Revision Order 1994 and shall come into force on 23rd December 1994.

(2) The Gloucester Harbour Orders 1889 to 1990 and this Order may be cited together as the Gloucester Harbour Orders 1889 to 1994.

(1) 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.
(2) 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 Act 1992, Schedule 3, paragraph 10.
(3) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
(4) S.I.1981/238.

Interpretation

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

“appointing authority” means the person or persons by whom one or more trustees may be appointed in accordance with paragraphs (1) and (2) of article 3 of this Order;

“dredging licence” means a licence under article 20 of this Order;

“general direction” means a direction given under article 10 of this Order;

“the harbour” means the harbour of Gloucester within the limits prescribed by article 10 (Limits of harbour) of the Gloucester Harbour Revision Order 1988(5);

“harbour master” means any person appointed as such by the Trustees and includes authorised deputies and assistants of a person so appointed;

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

“the new constitution date” means 1st August 1996;

“operator” and “telecommunications code system” have the meanings given by paragraph 1(1) of Schedule 4 to the Telecommunications Act 1984(6);

“special direction” means a direction given under article 11 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(7);
- (b) any other person who has a duty or power under the Land Drainage Act 1991(8);
- (c) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(9);
- (d) any operator of a telecommunications code system;

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

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

“the Trustees” means the Gloucester Harbour Trustees;

“vessel” means a ship, boat, raft or water craft of any description and includes non-displacement craft, a seaplane and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily), a hovercraft or any other amphibious vehicle;

“works” means works of any description; and

“works licence” means a licence under article 19 of this Order.

(5) S.I. 1988/1040.

(6) 1984 c. 12.

(7) 1990 c. 8.

(8) 1991 c. 59.

(9) 1949 c. 74; section 1 was amended by the [Local Government Act \(c.20\)](#), Sch 30.

PART II

NEW CONSTITUTION

Constitution of Trustees

3.—(1) On and after the new constitution date the Trustees shall consist of not less than ten, nor more than thirteen, persons of whom ten shall be appointed as follows—

- (a) three by the British Waterways Board;
- (b) one, representative of shipowning interests trading to or within or using the harbour, jointly by the Chamber of Shipping and the Institute of Chartered Shipbrokers;
- (c) one, representative of commercial interests other than the British Waterways Board trading to or within, or dependent upon, the harbour, by the Trustees holding office under the other sub-paragraphs of this paragraph after consultation with persons appearing to them to be representative of those commercial interests;
- (d) one, representative of yachting interests, by the Royal Yachting Association;
- (e) one by Nuclear Electric plc;
- (f) one by the Gloucestershire County Council;
- (g) one by the Gloucester City Council;
- (h) one by the Stroud District Council.

(a) (2) (a) There shall be added to the persons appointed under paragraph (1) above one person, representative of pilots, appointed by the Amalgamated Gloucester Pilots or, if that body ceases to have an identifiable existence, by the Trustees holding office under paragraph (1) above after consultation with other persons appearing to them to be representative of pilots.

(b) A person appointed under this paragraph shall cease forthwith to hold office and sub-paragraph (a) above shall cease to have effect if a majority of the authorised pilots for the harbour become employed by the Trustees under contracts of employment.

(3) In default of an appointment under paragraph (1)(b) above in accordance with paragraph (1) of article 4 of this Order, the trustees holding office under paragraphs (1) and (2) above shall, at a meeting at which not less than six of them are present, appoint a person appearing to them to be representative of shipowning interests.

(4) The trustees holding office under paragraphs (1) to (3) above may, at a meeting at which not less than six of them are present, appoint not more than two persons as additional trustees being in each case a person who in the opinion of the trustees appointing them has knowledge or experience which would be of value to the Trustees in the discharge of their functions; but a trustee holding office in right of an appointment made under this paragraph shall not vote respecting any appointment proposed under this paragraph.

(a) (5) (a) A person appointed under paragraph (1)(b), (c) or (d) or 2(a) or (3) above shall be a person who appears to the person or persons appointing him to have had wide experience of, and shown capacity in, the interests to be represented by the person to be appointed or to have had in some other respect knowledge or experience which would be of value to the Trustees in the discharge of their functions.

(b) In appointing a person under paragraph (1)(b), (c) or (d) or (3) or (4) above, the person or persons appointing him shall have regard to the desirability of appointing someone who is familiar with the special requirements and circumstances of the areas predominantly served by the undertaking of the Trustees.

Appointment of Trustees

4.—(1) Each appointing authority shall not later than the new constitution date and not later than 1st June in every third year thereafter, appoint one or more persons in accordance with article 3 of this Order.

(2) Each trustee so appointed shall (unless he shall previously die or resign) hold office from 1st August next following his appointment for a term of three years and upon ceasing to hold office shall be eligible for reappointment.

(3) Each trustee appointed under paragraph (3) or (4) of article 3 shall (unless he shall previously die or resign) hold office for such period as may be fixed by the Trustees in making his appointment.

Provisions applying to Trustees

5. On and after the new constitution date the Schedule to this Order shall have effect with respect to the Trustees.

PART III

POWERS OF TRUSTEES

General powers of Trustees

6. Without prejudice to any other power conferred upon the Trustees but subject to the provisions of this Order, the Trustees may take all such steps from time to time as they consider necessary or desirable for the maintenance, operation and improvement of the harbour and for those purposes and without prejudice to the generality of the foregoing the Trustees may—

- (a) improve, regulate and manage the harbour and provide harbour facilities therein; and
- (b) do all other things which in their opinion are expedient to facilitate the operation, improvement or development of the harbour.

Navigation aids

7.—(1) Subject to the provisions of this article, the Trustees may erect or place, alter, discontinue or remove aids to navigation within the harbour and, upon obtaining any necessary interest in land, in any place adjacent to the harbour.

(2) The Trustees shall not exercise the powers of paragraph (1) above in any place adjacent to the harbour without the approval of the Trinity House nor within the harbour limits of any other harbour authority or on land immediately adjacent thereto without the approval in writing of that authority.

(3) In this article, “aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same.

Removal of obstructions other than vessels

8.—(1) The Trustees 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 Trustees under paragraph (1) above is so marked as to be readily identifiable as the property of any person, the Trustees 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 Trustees, possession may be retaken 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 Trustees.

- (a) (3) (a) Notwithstanding the provisions of paragraph (2) above the Trustees 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 Trustees under this paragraph is sold, the Trustees 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 Trustees proves to the reasonable satisfaction of the Trustees that he was the owner thereof at that time; or
 - (ii) if within the said period no person proves his ownership at the said time, shall vest in the Trustees.

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

Repair of landing places etc.

9.—(1) In this article, “relevant feature” means any landing place, 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 Trustees.

(2) The Trustees may by notice require the owner or occupier of a relevant feature which in the opinion of the Trustees 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 satisfaction of the harbour master 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 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 Trustees 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 Trustees 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 Trustees notice of his appeal accompanied by a copy of his statement of appeal; and the Trustees 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.

General directions to vessels

10.—(1) The Trustees may, after consultation with the Chamber of Shipping and the Royal Yachting Association, 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 channels in the harbour which vessels are to use or refrain from using for movement or mooring;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for securing that vessels make use of descriptions of navigation aids specified in the direction;
- (d) for prohibiting—
 - (i) entry into or movement in the harbour by vessels at times of poor visibility due to the weather or any other condition;
 - (ii) 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; and
 - (iii) entry into or navigation within any main navigation channel 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) Any direction given under this article shall be consistent with and without prejudice to any regulations made by the Secretary of State under section 31 of the Severn Bridges Act 1992⁽¹⁰⁾.

(3) 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 subparagraphs (a), (b) and (c) of this paragraph.

(4) The Trustees may, after consultation with the Chamber of Shipping and the Royal Yachting Association, revoke or amend any general direction.

Special directions to vessels

11.—(1) A direction under this article may be given by the harbour master to a vessel anywhere in the harbour, requiring it to comply with a requirement made in or under a general direction and, so far as required for the ease, convenience or safety of navigation, for either of the following purposes—

- (a) regulating or requiring the movement, mooring or unmooring of a vessel;
- (b) regulating the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores otherwise than at a dock or pier.

(10) 1992 c. 3.

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

Publication of general directions

12.—(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 Trustees as soon as practicable once in Lloyd’s List newspaper or some other newspaper specialising in shipping news 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 harbour master to be appropriate.

Failure to comply with directions

13.—(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) of this article it shall be a defence for the person charged 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

14.—(1) Without prejudice to any other remedy available to the Trustees, 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; but the powers of this paragraph shall not be exercised in relation to a vessel unless, after reasonable enquiry has been made, the master cannot be found.

(3) Expenses incurred by the Trustees in the exercise of the powers conferred by this article shall be recoverable by them as if they were a charge of the Trustees in respect of the vessel.

Master’s responsibility in relation to direction

15. 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, to its cargo or to any other person or property.

Byelaws

16.—(1) In addition to the byelaws which may be made by the Trustees under section 83 of the Harbours, Docks, and Piers Clauses Act 1847⁽¹¹⁾ the Trustees may, from time to time, make such byelaws as they think fit with reference to all or any of the following—

- (a) regulating the navigation, berthing, mooring, careening and beaching of vessels and their speed and manner of navigation within the harbour;

(11) 1847 c. 27.

- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour and to navigation aids of every description which are used in connection with the harbour;
 - (c) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown whilst in exercise of their duties;
 - (d) regulating the placing, maintenance and use of moorings within the harbour;
 - (e) preventing and removing obstructions or impediments within the harbour;
 - (f) prohibiting or regulating the discharge of ballast, ashes, refuse, rubbish and other materials in the harbour;
 - (g) regulating vessels in the harbour and their entry into, use of and departure from the harbour and, without prejudice to the generality of the foregoing, 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;
 - (h) regulating or prohibiting the activities within the harbour of divers, surfers, water-skiers, jet-skiers and other persons engaged in similar recreational pursuits;
 - (i) prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground within the harbour; and
 - (ii) by vessels used for marking obstructions within the harbour;
 - (j) regulating the launching of vessels within the harbour;
 - (k) regulating or prohibiting the use of fire and lights within the harbour and within any vessel within the harbour;
 - (l) regulating the movement, speed and parking of vehicles within the harbour;
 - (m) regulating the control of domestic animals within the harbour.
- (2) In this article, “signals” includes sound and electronic signals.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons offending against them fines not exceeding level 3 on the standard scale;
 - (b) relate to the whole of the harbour or any part thereof;
 - (c) make different provisions for different parts of the harbour, or in relation to different classes of vessels.
- (4) Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972⁽¹²⁾ (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Trustees under this article as if the Trustees were a local authority and the clerk to the Trustees were a proper officer of a local authority; but, subject to paragraph (5) below, the Secretary of State may confirm the byelaws with such modifications as he thinks fit.
- (5) Where the Secretary of State proposes to make a modification which appears to him to be substantial, then—
- (a) he shall inform the Trustees and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification; and
 - (b) he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the Trustees and other persons who have been informed of the proposed modification to consider and comment on it.

(6) Section 12 (Inquiries) of the Gloucester Harbour Order 1959⁽¹³⁾ shall be amended by the substitution of the words “article 16 (Byelaws) of the Gloucester Harbour Revision Order 1994” for the words “section 9 (Byelaws) of the Gloucester Harbour Revision Order 1988”.

PART IV

CONTROL OF WORKS AND DREDGING IN THE HARBOUR

Restriction of works and dredging

17.—(1) Subject to paragraph (3) below, no person other than the Trustees shall—

- (a) construct, alter, renew or extend any works in the harbour; or
- (b) dredge in the harbour; on, under or over tidal waters or tidal land below the level of high water 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 19 or, as the case may require, article 20 of this Order.

(2) The Trustees 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 Trustees 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

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

⁽¹³⁾ See 1959 c. xxxvii; section 12 was amended by the Gloucester Harbour Revision Order 1988 (S.I. 1988/1040), article 9(4).

Licensing of works

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

- (2) Application for a works licence shall be made in writing to the Trustees 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 Trustees may require modifications in the plans, sections and particulars so submitted.

(3) The Trustees 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) The Trustees 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 and as a condition of the grant of the licence to pay such reasonable fees in respect of the Trustees' administrative expenses and overheads in supervising or inspecting where necessary the construction or maintenance of the works.

- (a) (5) (a) On receipt of an application for a works licence the Trustees shall serve on the National Rivers Authority a copy of the application and all plans, sections and particulars incidental thereto.
- (b) The Trustees shall consider such observations as the National Rivers Authority may submit to the Trustees within six weeks after service on the National Rivers Authority of the application and particulars in accordance with paragraph (a) above, and the Trustees shall not grant a works licence before the expiry of that period.
- (c) In granting a works licence the Trustees shall impose on the applicant such terms and conditions as give effect to such reasonable requirements as the National Rivers Authority may, within the said period, make in any observations to the Trustees to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for land drainage purposes is not impaired.
- (d) The provisions of subparagraph (c) above are subject to the Trustees' duty under paragraph (5) of article 21 of this Order to give effect to any direction given by the Secretary of State under that paragraph.

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

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

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

(9) Articles 23 to 26 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 Trustees as respects works belonging to the Trustees.

(10) In the carrying out of operations in pursuance of a works licence, the holder of the licence shall not—

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

without the consent of the statutory undertaker concerned.

(11) Nothing in this article affects the application in relation to any works of section 109 of the Water Resources Act 1991(14) (obstruction of a main river).

Licence to dredge

20.—(1) The Trustees 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 Trustees 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 Trustees may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (3) to (8), (10) and (11) of article 19 of this Order shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) The grant of a dredging licence shall not confer statutory authority for the carrying out of the operations covered by the licence.

Appeals in respect of works or dredging licence

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

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

may, within 28 days from the date on which the Trustees notify the applicant of their decision or the date on which the Trustees are, under article 19(8) 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 Trustees a copy of the notice of his appeal;

and the Trustees 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 amendment as he may specify.

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

Lights on tidal works during construction

22.—(1) The Trustees 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

(14) 1991 c. 57.

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 Trustees fail to comply with any requirement of 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.

Provision against danger to navigation

23.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part thereof the Trustees 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 Trustees fail to notify the Trinity House as required by this article or to comply with any requirement of a direction under it, the Trustees 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

24.—(1) Where a tidal work constructed after the coming into force of this Order is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Trustees 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 this article.

(3) If, at the end of 30 days from the date when a notice under this article is served upon the Trustees, 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 Trustees.

Survey of tidal works

25. 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 Trustees.

Permanent lights on tidal works

26.—(1) After the completion of a tidal work the Trustees 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 Trustees 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

Crown rights

27.—(1) Nothing in this Order shall affect 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 part 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 department.

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

For protection of National Rivers Authority

28. Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the application of section 109 of the Water Resources Act 1991, section 23 of the Land Drainage Act 1991 or any byelaws made under those Acts in relation to anything done under or pursuant to this Order.

Saving for Trinity House

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

Defence of due diligence

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

- (2) The provisions referred to in paragraph (1) above are the following—
- article 22;
 - article 23;
 - article 26.

(3) If in any case the defence provided under paragraph (1) 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, not less than 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession, identifying, or assisting in the identification of, that other person.

Repeals

31.—(1) The following provisions shall cease to have effect on the coming into force of this Order—

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- (a) in the Gloucester Harbour Order 1890(15), section 18 (Power to make byelaws);
 - (b) in the Gloucester Harbour Order 1963(16), section 9 (Harbourmaster may give directions as to mooring) and; section 10 (Directions of harbourmaster need not be in writing);
 - (c) in the Gloucester Harbour Revision Order 1988(5), article 9 (Byelaws).
- (2) The following provisions shall cease to have effect on the new constitution date—
- (a) in the said Order of 1890, section 9 (Part of Commissioners Clauses Act 1847(17) incorporated);
 - (b) in the said Order of 1988, article 3 (Constitution of Trustees) and; article 4(1), (2) and (4) (Appointment of Trustees);
 - (c) the Gloucester Harbour Revision Order (Amendment) Order 1990(18).

Signed by authority of the Secretary of State for Transport

9th December 1994

J D Henes
An Under Secretary in the
Department of Transport

(15) Confirmed by 1890 c. xcvii.
(16) See 1963 c. xxi.
(5) S.I. 1988/1040.
(17) 1847 c. 16.
(18) S.I. 1990/1116.

SCHEDULE

Article 5

PROVISIONS APPLYING TO THE TRUSTEES

1. The first meeting of the Trustees on or following each 1st August on which the Trustees take office pursuant to article 4 of this Order shall be convened by the clerk to the Trustees as soon as reasonably possible after that date and the clerk shall send notice of that meeting by post to each of the Trustees.

2.—(1) At each such meeting the trustees present shall choose one of their number to act as chairman of the Trustees, and at that meeting or any subsequent meeting the trustees present may choose another of their number to act as deputy chairman.

(2) So long as they continue as trustees the persons chosen under sub-paragraph (1) above to act as chairman and deputy chairman respectively shall hold office as such from and including the meeting at which they are chosen until the next appointment of a chairman.

3.—(1) If any casual vacancy occurs in the office of chairman, the Trustees shall as soon as may be after the occurrence of such vacancy choose some other trustee to fill the vacancy.

(2) If any casual vacancy occurs in the office of deputy chairman, the Trustees may choose some other trustee to fill the vacancy.

(3) So long as he continues as a trustee every person chosen under this paragraph to act as chairman or deputy chairman shall continue in office as such for as long as the person in whose place he has been so chosen would have been entitled to continue in office if the casual vacancy had not occurred.

4. In the absence of the chairman the person for the time being holding office as deputy chairman (if any) shall have and may exercise all the powers of the chairman.

5. If at a meeting of the Trustees neither the chairman nor the deputy chairman is present the trustees present shall choose one of their number to be chairman of the meeting.

6. The Trustees may appoint such committees consisting of trustees as they see fit and may delegate to a committee appointed under this paragraph the performance of any of their powers or duties except—

- (a) a duty imposed on the Trustees by or under any enactment;
- (b) the making of byelaws;
- (c) the levying of ship, passenger and goods dues;
- (d) the appointment of a harbour master;
- (e) powers or duties relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those powers or duties are exercisable for the purposes of the safety of navigation;
- (f) the nomination of persons to act as constables.

7. The Trustees may act notwithstanding a vacancy among the Trustees and no act of the Trustees or of any committee of the Trustees shall be deemed to be invalid by reason of any irregularity in the appointment of a trustee or of their chairman or deputy chairman. 8. A trustee shall vacate his office if he—

- (a) is adjudged bankrupt or makes a composition or arrangement with his creditors; or
- (b) is convicted in the British Islands of any offence and ordered to be imprisoned for a period of not less than three months; or

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- (c) has, for a period of four consecutive months, been absent from meetings of the Trustees otherwise than by reason of illness or some other cause approved during that period by the Trustees.
9. A trustee may resign his office at any time by notice in writing given to the clerk to the Trustees.
10. If at any meeting of the Trustees there is an equality of votes on a question, the chairman of the meeting shall have a second or casting vote.
11. The quorum required for a meeting of the Trustees shall be seven.
12. The Trustees may appoint upon such terms and conditions as they see fit a clerk and such other officers and servants as they may determine.
13. Each trustee shall be liable for his own expenses in attending meetings of the Trustees.
- 14.—(1) The Trustees shall cause minutes to be made—
- (a) of the names of trustees present at a meeting of the Trustees or of a committee of the Trustees; and
 - (b) of all proceedings or resolutions at such meetings; and such minutes, if signed by a person purporting to be chairman of the meeting to which the minutes relate or of a subsequent meeting at which the minutes were approved as a correct record, shall be received in evidence without further proof.
- (2) Until the contrary is proved, a meeting for which minutes have been so made or signed shall be deemed to have been duly convened and held and, if it was a meeting of a committee, that committee shall be deemed to have had power to deal with the subject of the minutes.
15. A document purporting to be duly executed under the seal of the Trustees shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document duly executed.
16. Subject to the provisions of this Schedule, the procedure of the Trustees shall be regulated in such manner as the Trustees determine.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order re-enacts the provisions of earlier Orders relating to the constitution of the Gloucester Harbour Trustees, with amendments to provide for the appointment of an additional trustee by the Royal Yachting Association and for Nuclear Electric plc to be named as an appointing authority in succession to the Central Electricity Generating Board. It also substitutes new provisions respecting the constitution and proceedings of the Trustees in place of provisions of the Commissioners Clauses Act 1847.

In addition the Order confers new general powers upon the Trustees and new powers to—

- (a) provide navigation aids;
- (b) remove obstructions to navigation and require the repair of landing places etc;
- (c) issue general and special directions to vessels;
- (d) make byelaws;

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- (e) license works and dredging. Provision is also made in the Order imposing particular obligations in relation to tidal works belonging to the Trustees.