
STATUTORY INSTRUMENTS

1998 No. 1016

The Port of Birkenhead Harbour Empowerment Order 1998

PART I

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port of Birkenhead Harbour Empowerment Order 1998 and shall come into force on 22nd April 1998.

Interpretation

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks, and Piers Clauses Act 1847(1);

“the Company” means Birkenhead Port Limited;

“Dockmaster of the Company” has the meaning given by paragraph (5)(b) of article 3 of this Order;

“deposited plans” and “deposited sections” mean respectively the plans and sections prepared in triplicate, signed by Head of Ports Division in the Department of the Environment, Transport and the Regions and marked “The Port of Birkenhead Harbour Empowerment Order 1998” of which copies are deposited at the offices of the Secretary of State for the Environment, Transport and the Regions, the offices of MDHC and the registered office of the Company;

“the Harbour Master” means the harbour master appointed by MDHC under the Mersey Docks and Harbour Acts and Orders 1857 to 1992 and includes his deputies and assistants;

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

“limits of deviation” means the limits of deviation shown on the deposited plans;

“limits of jurisdiction” means the area described in article 4 of this Order;

“MDHC” means The Mersey Docks and Harbour Company;

“the port premises” means the works and the land and premises at any time belonging to, vested in or occupied by the Company and used, intended to be used or set aside for the purposes of, or in connection with, the commercial management and operation of the works;

“the river” means the river Mersey;

“tidal work” means so much of any work authorised by this order as is on, under or over tidal waters or tidal lands below the level of high water;

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

“the undertaking” means the undertaking of the Company within the limits of jurisdiction as authorised by this Order;

“vessel” means a ship, boat or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968(2) or any other amphibious vehicle or a seaplane;

“the works” means Works Nos. 1 to 3 authorised by article 5 of this Order, and any works constructed under article 7 of this Order for or in connection with or subsidiary to any of those works and includes those works as reconstructed, altered, replaced or relaid under paragraph (2) of the said article 5.

(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) Reference points specified in this Order shall be construed as references to Ordnance Survey National Grid reference points.

(4) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

Incorporation of Harbours, Docks, and Piers Clauses Act 1847

3.—(1) The 1847 Act (except sections 6 to 25, 31, the proviso to section 32, sections 42, 48 to 50, 60 to 63, 66, 67, 73, and 77 to 82), 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 69 shall have effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(3) Subject to article 20 of this Order, the byelaws which the Company may make by virtue of section 83 shall include such byelaws as they think fit for all or any of the following purposes—

- (a) the management, control and regulation of the port premises and of goods, wares, merchandise and vehicles using or passing over or frequenting or resorting to the port premises;
- (b) the control and regulation of vessels being within the prescribed limits;
- (c) the conduct of persons using or being on the port premises and the control or prohibition of smoking by such persons; and
- (d) safety precautions to be observed by persons on vessels being within the prescribed limits or persons using or being on the port premises.

(a) (4) (a) Section 85 shall have effect as if for the words from “in the prescribed manner” to the end of the section there were substituted the words “by the Secretary of State”.

(b) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972(3) shall apply to any byelaws made by the Company under the said section 83 as incorporated with this Order; and those provisions, in their application to any such byelaws, shall have effect as if the references to a local authority were references to the Company.

(c) Subsection (7) of the said section 236, in its application to any such byelaws, shall have effect as if—

- (i) after the words “The confirming authority may confirm” there were inserted the words “with or without modifications”; and

(2) 1968 c. 59.

(3) 1972 c. 70.

(ii) there were added at the end the following proviso—

“Provided that, where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial, 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 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 as if the reference to the proper officer of the authority were a reference to the secretary of the Company.

(5) In construing the provisions of the 1847 Act as incorporated with this Order—

- (a) the expression “the special Act” means this Order, the expressions “the Promoters of the undertaking” and “the undertakers” mean the Company, and the expression “the harbour, dock or pier” means the works;
- (b) the expression “the harbour master” means the person appointed by the Company to be the Dockmaster with reference to the works (in this Order referred to as “the Dockmaster of the Company”);
- (c) the meaning of the word “vessel” as defined in this Order shall be substituted for the meaning assigned to that word by section 3 of the 1847 Act;
- (d) section 52 of the 1847 Act shall extend to empower the Dockmaster of the Company to give directions prohibiting the mooring of vessels within the prescribed limits;
- (e) the reference in section 53 of the 1847 Act 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 Dockmaster of the Company 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.