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STATUTORY INSTRUMENTS

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**2023 No. 470**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Dee Estuary Conservancy Harbour Revision Order 2023**

*Made* - - - - *19th April 2023*

*Coming into force* - - - *2023*

The Natural Resources Body for Wales is the conservancy authority, harbour authority and local lighthouse authority for the estuary of the river Dee(1) and has applied for a harbour revision order in accordance with section 14 of the Harbours Act 1964(2) (“the 1964 Act”).

There were objections made to the application which were not withdrawn, and an inquiry was held in accordance with paragraph 18(1) of Schedule 3 to the 1964 Act(3).

The Secretary of State has considered the objections made and not withdrawn and the report of the person holding the inquiry.

The Secretary of State is satisfied as mentioned in section 14(2)(b) of the 1964 Act.

The Secretary of State for Transport, being the appropriate Minister(4) under section 14(7) of the 1964 Act, in exercise of the powers conferred by section 14(1), (2A) and (3) of the 1964 Act and now vested in the Secretary of State for Transport(5), makes the following Order.

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- (1) The functions of conservancy authority and harbour authority were conferred on the Dee Conservancy Board by sections 35 and 36 of the Dee Conservancy Act 1889 (c. clvi) and subsequently transferred to the River Dee Catchment Board. That Board was, by virtue of the Rivers Dee and Clwyd Catchment Area Order 1946 (S.I. 1946/1036) combined with the River Clwyd Catchment Board to form the Rivers Dee and Clwyd Catchment Board; this was replaced by the Dee and Clwyd River Board by virtue of the Dee and Clwyd River Board Constitution Order 1950 (S.I. 1950/1085) and, in turn, by the Dee and Clwyd River Authority by virtue of the Dee and Clwyd River Authority Constitution Order 1964 (S.I. 1964/1015). Section 2 of the Water Act 1973 (c. 37) transferred the functions of the said River Authority to the Welsh National Water Development Authority and section 142 of the Water Act 1989 (c. 15) transferred that Authority’s functions of a conservancy authority to the National Rivers Authority. Those functions were subsequently transferred to the Environment Agency by virtue of section 2(1)(a)(vi) of the Environment Act 1995 (c. 25). In relation to the functions of local lighthouse authority for the Dee Estuary, section 193(2) of the Merchant Shipping Act 1995 (c. 21) had the effect of conferring those functions on the National Rivers Authority as the then statutory harbour authority before they were vested in the Environment Agency, as mentioned above. The Natural Resources Body for Wales, whose head office address is located at Cambria House, 29 Newport Road, Cardiff CF24 0TP ([www.naturalresources.wales](http://www.naturalresources.wales)), was established by the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W.230)) and the above-mentioned functions of the Environment Agency were transferred to that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W.90)). Mostyn Docks Limited is, however, the harbour authority for that part of the river Dee Estuary described in the Mostyn Docks Orders 1988 to 2016 (see the Mostyn Docks Harbour Revision Order 2016 (S.I. 2016/75)).
- (2) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4(1) and (8), 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c. 48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c. 56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c. 23), section 315 and Schedule 21, paragraphs 1 and 3(2).
- (3) Schedule 3, paragraph 18(1) was amended by the Marine and Coastal Access Act 2009 (c. 23), Schedule 21, paragraph 5(1) and (2).
- (4) For the definition of “the minister” as mentioned in section 14(7), see section 57(1) of the 1964 Act (c. 40).

## PART 1

### PRELIMINARY

#### **Citation, commencement and extent**

1.—(1) This Order may be cited as the Dee Estuary Conservancy Harbour Revision Order 2023 and comes into force on [ ] 2023.

(2) This Order extends to England and Wales.

#### **Interpretation**

2.—(1) In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(6);

“the 1889 Act” means the Dee Conservancy Act 1889(7);

“the 1995 Act” means the Merchant Shipping Act 1995(8);

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

“the Chamber of Shipping” means the trade association for the United Kingdom shipping industry, incorporated under the name ‘The Chamber of Shipping Limited’ and having its registered office address at 30 Park Street, London SE1 9EQ;

“the channels” means the navigable channels through the estuary designated by the conservancy authority under article 13(2)(a) of this Order;

“charges” means the charges, rates, tolls and dues which the conservancy authority is for the time being authorised to demand, take and recover under and by virtue of this Order;

“the conservancy authority” means the Natural Resources Body for Wales;

“the company” means Mostyn Docks Limited (which is registered in England and Wales with the number 1517767 and whose registered office address is The Port of Mostyn, Coast Road, Mostyn, Holywell, Flintshire CH8 9HE) or its successor from time to time as statutory harbour authority for the port);

“the conservancy undertaking” means the undertaking of the conservancy authority authorised by the 1889 Act and this Order;

“dredging licence” means a licence granted under article 29 of this Order;

“the estuary” means the area consisting of so much of the sea and the river Dee and its estuary below the level of high water between National Grid reference point SJ39632 65874 (Wilcox Point) and an imaginary straight line connecting National Grid reference point SJ12962 85088 (Point of Ayr) with National Grid reference point SJ20263 88505 (Hilbre Point) and all channels, bars, sandbanks and shoals belonging to or situated within such area and all tributaries, streams, havens, creeks, bays and inlets communicating with it so far as the tide flows and reflows over the same;

“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,

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(5) S.I. 1981/238, 1997/2971, 2001/2568, 2002/2626 and 2008/1034.

(6) 1847 c. 27.

(7) 1889 c. clvi.

(8) 1995 c. 21.

crab and lobster and the harvesting of cockles by any means, and “fishing” is to be construed accordingly;

“general direction” means a direction given under article 13 of this Order;

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

“the harbour master” means any natural person appointed as such by the conservancy authority in accordance with section 51 (appointment of harbour, dock or pier master) of the 1847 Act, and includes the duly authorised deputies and assistants of the harbour authority and any other person for the time being authorised by the conservancy authority to act, either generally or for a specific purpose, in the capacity of harbour master;

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

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

“mooring” includes buoys and other apparatus provided for the mooring of vessels;

“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 that person’s agent in relation to them; 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;

“the port” means the area described in article 4 of the Mostyn Docks Harbour Empowerment Order 1988(9), as extended by the Mostyn Docks Harbour Revision Order 2016(10);

“property” means any property whether real or personal;

“Secretary of State” means the Welsh Ministers in relation to any function that has been devolved to the Welsh Ministers;

“small vessel” means a vessel of less than 15 metres in length;

“special direction” means a direction given under article 15 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(11);
- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(12); or
- (c) any operator of an electronic communications code network within the meaning of the Communications Act 2003(13);

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond(14);

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(9) S.I. 1988/1677.

(10) S.I. 2016/75; see article 3.

(11) 1990 c. 8.

(12) 1949 c. 74; section 1 was amended by the Local Government Act 1972 (c. 20), Schedule 30.

(13) 2003 c. 21; the term “electronic communications code” is defined in section 151.

(14) The Corporation of Trinity House, Tower Hill, London EC3N 4DH.

“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 when used on land;

“vessel” means every description of vessel and watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation of persons or goods on water;

“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 28 (licensing of works) of this Order.

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

(3) A vessel of any description is a ship for the purposes of the application of the Harbours Act 1964 to the conservancy undertaking.

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

3.—(1) The 1847 Act (except sections 6 to 25, 28, 31, 32, 35, 42, 48 to 50, 60, 67, and 83 to 90), so far as applicable to the purposes of this Order, is incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) has 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 is liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 69 (removal of combustible matter on quay, dock or wharf) has effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “is liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

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

(a) the expression—

(i) “the special Act” means this Order,

(ii) “the undertakers” means the conservancy authority, and

(iii) “the harbour, dock, or pier” means the estuary;

(b) for the definition of the word “owner” in section 3 of the 1847 Act there is substituted the definition of that word in article 2(1);

(c) for the definition of the word “vessel” in section 3 of the 1847 Act there is substituted the definition of that word in article 2(1); and

(d) the reference in section 53 of the 1847 Act to notice of a direction by the harbour master served upon a vessel is not to 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 2

### ESTUARY REGULATION

#### **General functions of the Natural Resources Body for Wales in relation to the conservancy undertaking**

4.—(1) The Natural Resources Body for Wales continues to be the conservancy authority, harbour authority and local lighthouse authority for the estuary (referred to in this Order as “the conservancy authority”), pursuant to the 1889 Act and this Order and may, subject to the provisions of this Order, take all such steps from time to time as it may consider necessary or desirable for the—

- (a) conservancy, maintenance, protection, regulation, operation, management and improvement of the estuary and its facilities, including recreational facilities; and
- (b) conservation of the estuary’s flora, fauna and geological and physiographical features of special interest.

(2) For the purposes mentioned in paragraph (1) but without limiting its scope, the conservancy authority may—

- (a) improve, maintain, regulate, manage, mark and light the estuary;
- (b) subject to obtaining the necessary rights in or over land—
  - (i) execute and place in and over the estuary such structures, works and equipment as are required; and
  - (ii) operate, maintain, renew, alter, extend, demolish, remove and reconstruct structures, works and equipment in the estuary (including those executed or placed in accordance with sub-paragraph (i)); and
- (c) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the conservancy undertaking.

(3) The conservancy authority may, from time to time, formulate and publish a management plan in relation to its conservancy, maintenance, protection, regulation, operation, management and improvement of the conservancy undertaking.

(4) In exercising its powers under paragraph (2)(b), the conservancy authority may 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.

#### **Consultative Committee**

5.—(1) The conservancy authority must establish a committee, to be known as the Dee Estuary Consultative Committee, which it must, except in a case of special urgency, consult on all matters substantially affecting the conservancy, maintenance, protection, regulation, operation, management and improvement of the estuary and its navigation.

(2) Subject to paragraphs (3) to (6), the committee is to consist of up to sixteen members appointed by the conservancy authority, of whom—

- (a) two each are to be appointed on the nomination of—
  - (i) Wirral Metropolitan Borough Council, and
  - (ii) Flintshire County Council;

- (b) one is to be appointed on the nomination of each of—
- (i) Cheshire West and Chester Council,
  - (ii) Natural England<sup>(15)</sup>,
  - (iii) the Royal Yachting Association<sup>(16)</sup>,
  - (iv) the company, and
  - (v) the Maritime and Coastguard Agency<sup>(17)</sup>;
- (c) one, to represent local fishing interests in the estuary, is to be appointed after consultation with such persons (if any) as the authority considers appropriate, being a person who appears to it to be representative of those interests;
- (d) two, to represent commercial interests in the estuary, other than fishing, are to be appointed after consultation with such persons (if any) as the authority considers appropriate, being persons who appear to it to be representative of those interests;
- (e) one, to represent local conservation interests in the estuary, is to be appointed after consultation with the Dee Estuary Conservation Group and with such other persons (if any) as the authority considers appropriate, being a person who appears to it to be representative of those interests;
- (f) one, to represent local recreational interests in the estuary, other than fishing, is to be appointed after consultation with the Inland Waterways Association and with such other persons (if any) as the authority considers appropriate, being a person who appears to it to be representative of those interests; and
- (g) no more than two may be appointed to represent such persons having an interest in the estuary, in addition to those mentioned in sub-paragraphs (a) to (f), as the conservancy authority may from time to time consider appropriate to appoint.
- (3) In the case of any of the appointments referred to in sub-paragraphs (a) or (b) of paragraph (2), if—
- (a) it appears to the conservancy authority that the body by whom the nomination is to be made has refused or failed to nominate a member after being requested by the authority to do so, or
  - (b) the body by whom a nomination is to be made has ceased to have an identifiable existence,
- the appointment in question may be made by the authority as it considers appropriate, after consultation with such persons (if any) appearing to it to be representative of the interests represented, or formerly represented, by the nominating body specified in the relevant sub-paragraph.
- (4) The conservancy authority is not obliged to appoint a person who is nominated under sub-paragraph (a) or (b) of paragraph (2) 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 committee is three years from the date of their appointment and, on ceasing to hold office, the member is to be eligible for re-appointment.
- (6) A member of the committee may at any time, by notice in writing to the conservancy authority, resign their office.
- (7) The committee may determine its own quorum and procedure and may establish one or more sub-committees for any purpose connected with its functions under this article.

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<sup>(15)</sup> Natural England, whose head office address is at Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX.

<sup>(16)</sup> Royal Yachting Association, registered in England and Wales with company number 00878357 and whose registered office address is RYA House, Ensign Way, Hamble SO31 4YA.

<sup>(17)</sup> The Maritime and Coastguard Agency, whose head office address is at Spring Place, 105 Commercial Road, Southampton SO15 1EG.

(8) In addition to its members, the conservancy authority must appoint from among them the chairperson of the committee.

(9) Notwithstanding the duty to consult mentioned in paragraph (1), the conservancy authority must consult the committee on proposals to—

- (a) formulate and publish a management plan under article 4(3);
- (b) impose or vary any charges in relation to use of the estuary;
- (c) make byelaws;
- (d) construct or license any significant works in the estuary; or
- (e) carry out or license dredging.

(10) The conservancy authority must take into consideration any matter, recommendation or representation which may from time to time be referred or made to it by the committee, whether or not the committee has been consulted by the authority in relation to that matter, recommendation or representation.

#### **Aids to navigation**

6.—(1) In addition to its powers under section 201 of the 1995 Act (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the conservancy authority may erect or place, alter, discontinue or remove aids to navigation in any place immediately adjacent to the estuary.

(2) The conservancy authority must not exercise the powers under paragraph (1) without the approval of Trinity House.

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

7.—(1) Without prejudice to its powers under any other enactment, including any enactment contained in this Order, the conservancy authority may remove any item which is causing, or likely to become, an obstruction or impediment to the proper use of any part of the estuary other than—

- (a) a vessel; or
- (b) wreck within the meaning of Part 9 of the 1995 Act.

(2) If any item removed by the conservancy authority under paragraph (1) is known to the authority to be, or is so marked as to be readily identifiable as, the property of any person, the authority must, within one month of the item coming into its custody, give notice in accordance with paragraph (7) to that person and, if possession of the item is not retaken within the period specified in and in accordance with the terms of the notice, property in the item vests in the authority at the end of that period.

(3) If the ownership of any item removed by the conservancy authority under paragraph (1) is unknown and cannot be identified, whether through insufficiency or absence of marking, and is not proved to the reasonable satisfaction of the authority within three months of coming into its custody, property in that item vests in the authority.

(4) The conservancy authority may, at such time and in such manner as it thinks fit, sell or otherwise dispose of any item which is of a perishable or obnoxious nature, or the custody of which involves unreasonable expense or inconvenience notwithstanding that property in it has not vested in the authority under this article.

(5) Where an item is sold under paragraph (4), the conservancy authority must publish a notice on one occasion in a newspaper circulating in the locality of the estuary and electronically on the

conservancy authority's website<sup>(18)</sup> for a period of 28 days giving the details of the property sold and may retain out of the proceeds of sale any expenses incurred by it under this article in relation to the item, and any balance—

- (a) must be paid to any person who within three months from the time when the item came into the custody of the authority proves to its reasonable satisfaction that they were the owner of it at the time when it came into the authority's custody; or
  - (b) if no person proves ownership within the period mentioned in sub-paragraph (a), such balance vests in the authority at the end of that period.
- (6) If any item removed under this article—
- (a) is sold by the conservancy authority and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal, or
  - (b) is unsaleable,

the authority may recover the deficiency or the whole of the expenses, as the case may be, from the person who was its owner at the time when the item removed came into the custody of the authority or who was its owner at the time of its abandonment or loss.

- (7) A notice given under paragraph (2) in relation to an item must—
- (a) be in writing,
  - (b) specify the item removed, and
  - (c) state that upon proof of ownership to the reasonable satisfaction of the conservancy authority possession of it may be taken—
    - (i) at a place specified in the notice, and
    - (ii) within the time specified, being not less than 14 days after the date when the notice is served.
- (8) The conservancy authority must not, under this article, remove any item that has been placed or constructed by any person pursuant to any enactment, or under the provisions of a consent or licence given or issued by the authority under that enactment.

### **Moorings**

**8.—**(1) The conservancy authority may provide, place, lay down, maintain, renew, use, have or remove such moorings within the estuary—

- (a) on land owned or leased by it or in which it holds an interest, or
- (b) with the consent in writing of the owner and (if appropriate) lessee thereof, on any other land in the estuary,

as it considers necessary or desirable for the convenience of vessels.

(2) The conservancy authority may issue permits on such conditions, including conditions as to payment, as it thinks fit authorising the holder of the permit to use or allow the use of any moorings provided by the authority under this article.

(3) The conservancy authority may enter into such arrangement as it sees fit with any person with respect to the payments referred to in paragraph (2).

- (4) The conservancy authority—
- (a) may give notice in writing to the person having the control of any vessel using any mooring in the estuary at the date this Order comes into force requiring that person within 28 days

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<sup>(18)</sup> Available at <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/information-for-mariners-on-the-dee-estuary/?lang=en> .



to remove the mooring in order to enable the authority to provide moorings in accordance with paragraph (1); and

(b) may offer to make available to the person mentioned in paragraph (a) a mooring provided by it under paragraph (1) as soon as such mooring has been laid down.

(5) If any person fails to comply with a notice given by the conservancy authority under paragraph (4), the authority 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.

(6) The conservancy authority may from time to time, with or without imposing conditions, including any fee that the authority may prescribe, grant to a person a licence to place, lay down, maintain, renew, use or have existing or future moorings, for vessels in the estuary.

(7) Nothing in any licence granted under paragraph (6) entitles a person to place, lay down, maintain, renew, use or have any mooring on land not owned or leased by that person or by the conservancy authority.

(8) The conservancy authority may charge, in relation to the granting of a licence, such reasonable fee as it may from time to time prescribe.

(9) Any person who—

(a) intentionally obstructs any person acting under the authority of the conservancy authority in setting out moorings,

(b) intentionally and without lawful authority pulls up or removes any moorings or any part of such moorings from the estuary,

(c) without reasonable excuse causes or permits a vessel to be moored in the estuary except at a mooring provided or licensed by the conservancy authority under this article, or

(d) places, lays down, maintains, renews or has in the estuary any mooring not provided or licensed by the conservancy authority under this article,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) If any person commits an offence under paragraph (9)(c) the conservancy authority may at any time after the expiration of 7 days from the date of that offence—

(a) remove the vessel, including any tackle on or associated with the vessel, or

(b) sell or otherwise dispose of the vessel and any tackle mentioned in sub-paragraph (a).

(11) Where a vessel is sold or disposed of under paragraph (10)(b), the conservancy authority may recover out of the proceeds of sale or disposal—

(a) any unpaid charge payable under paragraph (2),

(b) any unpaid licence fee payable under paragraph (6), and

(c) the expenses of removal or disposal under paragraph (10),

and must hold any surplus proceeds of sale or disposal on trust for the owner of the vessel.

(12) If the owner of a vessel removed under paragraph (10)(a) is unknown and cannot after diligent inquiry be found, the conservancy authority may apply to the Magistrates' Court for an order giving appropriate directions as to the disposal by the authority of any surplus proceeds of sale.

(13) If any person commits an offence under paragraph (9)(d), the conservancy authority may remove the mooring in question and recover from that person the expenses incurred in doing so.

**Repair of landing places, etc.**

**9.**—(1) The conservancy authority may by written notice given to the owner or occupier of a pier, landing place, embankment, structure or other work which in the opinion of the authority is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the estuary, or
- (b) a hindrance to the navigation of the estuary,

require that owner or occupier to remedy its condition to the authority's satisfaction within such reasonable period of time as is specified in the notice.

(2) 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 it, or such other time as the Secretary of State on an appeal may substitute for it, that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where a person fails to comply with a notice mentioned in paragraph (1), the conservancy authority may carry out the works it considers necessary to remedy the condition of the pier, landing place, embankment, structure or other work in question and may recover the expenses of doing so from the person on whom the notice was served.

(4) A notice under paragraph (1) must have annexed to it a copy of this article.

(5) A person wishing to dispute a notice served by the conservancy authority under this article may, during the period of 42 days beginning with the date on which the notice was served upon them, appeal to the Secretary of State against the notice.

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

(7) A person who appeals under paragraph (5) must provide to the conservancy authority a copy of the notice of the appeal and statement of grounds.

(8) The conservancy authority may, within 21 days following receipt of the notice and statement of grounds in accordance with paragraph (7), provide to the Secretary of State its observations on the appeal.

(9) Where an appeal has been made under paragraph (5), the Secretary of State must either—

- (a) quash the notice,
- (b) modify its requirements, or
- (c) dismiss the appeal.

**Power to dredge**

**10.**—(1) Subject to the provisions of this Order, the conservancy authority may from time to time deepen, dredge, scour, cleanse, alter or improve so much of the bed, shores and channels of the estuary and the approaches to it as the authority considers appropriate.

(2) Subject to paragraphs (3) and (4) the conservancy authority may use, appropriate or dispose of, any material, other than any wreck within the meaning of Part 9 of the 1995 Act, that has from time to time been dredged by it.

(3) Any material dredged under paragraph (2) must not 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.

(4) The conservancy authority must not dispose of any material dredged under paragraph (2) within the area of the Port of Liverpool as defined in the Mersey Docks and Harbour Act 1971<sup>(19)</sup>

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(19) 1971 c. lvii.

without the written consent of the Mersey Docks and Harbour Company<sup>(20)</sup> and the Acting Conservator of the River Mersey, such consent not to be unreasonably withheld.

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

**11.**—(1) In the application of the 1995 Act to the conservancy authority, section 252 (powers of harbour and conservancy authorities in relation to wrecks) of that Act has effect in relation to a vessel sunk, stranded or abandoned before as well as after the making of this Order, and any reference in that section to the Secretary of State is to be treated as a reference to the Secretary of State as defined in article 2(1).

(2) Subject to paragraph (3), and to any enactment for the time being in force limiting its liability, the conservancy authority may recover from the owner of any vessel in relation to which it has exercised its powers under section 252 of the 1995 Act any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of those sections.

(3) Except in a case which is in the opinion of the conservancy authority a case of emergency, paragraph (2) does not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on it by section 252 of the 1995 Act, other than the power of lighting and buoys, the authority has given to the owner of the vessel not less than 48 hours' notice of its intention to do so.

(4) If before the notice expires, the conservancy authority receives from the owner counter-notice in writing that the owner desires to dispose of the vessel itself, the owner will be at liberty to do so, and the conservancy authority must not exercise the powers in section 252 in relation to that vessel until the expiration of—

- (a) seven days from the receipt of the counter-notice, and
- (b) any further continuous period during which the owner of the vessel proceeds with the disposal of the vessel with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to the owner by the authority.

(5) A notice under paragraph (3) to the owner of a vessel may be served by the conservancy authority—

- (a) by delivering it to the owner,
- (b) by sending it to the owner by registered post or recorded delivery service, addressed to the owner at his or her last known place of business or abode in the United Kingdom, or
- (c) if the identity of the owner or any such place of business or abode is not known to the authority, or is not in the United Kingdom, by displaying the notice at such places as the authority considers appropriate for the period of duration of the notice.

(6) In this article “owner”, in relation to any vessel means, as the case may be—

- (a) the present owner, or
- (b) the person who was the owner of the vessel at the time of the sinking, stranding or abandonment of it.

(7) The powers conferred on the conservancy authority by this article are in addition to and not in derogation of any other powers exercisable by it for or with respect to the removal of wrecks within the estuary and the approaches to it.

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<sup>(20)</sup> The Mersey Docks and Harbour Company Limited, registered in England and Wales with company number 07438262 and whose registered office address is Maritime Centre, Port of Liverpool, Liverpool, Merseyside L21 1LA.

## General byelaws

12.—(1) The conservancy authority may from time to time make byelaws for the efficient management and regulation of the estuary.

(2) Without prejudice to the generality of paragraph (1), the conservancy authority may make byelaws under this article for any of the purposes set out in Schedule 1.

(3) Byelaws made under this article may—

- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given under them, on summary conviction, fines not exceeding level 4 on the standard scale;
- (b) relate to the whole of the estuary or to any part of it;
- (c) make different provisions for different parts of the estuary or in relation to different classes of vessels or vehicles; and
- (d) otherwise make different provision for different circumstances.

(4) Where a person is charged with an offence against a byelaw in force under this article it is a defence—

- (a) that the offence was not caused or facilitated by any act or neglect on the part of that person or on the part of any other person engaged or employed by that person, and
- (b) if that person was at the material time the owner or master of a vessel, that all reasonable steps were taken to prevent the commission of the offence.

(5) The provisions of—

- (a) section 236(3), with the exception of the words “Subject to subsection (3A) below, the”,
- (b) section 236(4) to (8) and (11), and
- (c) section 238,

of the Local Government Act 1972(21) (“the 1972 Act”) (which relate to the procedure for making, and evidence of, byelaws) apply to any byelaws made by the conservancy authority under this article as if the authority was a local authority for the purposes of the 1972 Act, other than a council for a principal area in Wales.

(6) The provisions referred to in paragraph (5), in their application to any byelaws made under this article, have effect subject to the modification that for the references to a local authority there are substituted references to the conservancy authority.

(7) Section 236(7) of the 1972 Act, in its application to any byelaws made under this article is, subject to sub-paragraph (8), to be read as if it were modified by the insertion of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.

(8) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

- (a) it must inform the conservancy authority and require it to take any steps it thinks necessary for informing persons likely to be concerned with the modification; and
- (b) it must not confirm the byelaws until there has elapsed such period as it thinks reasonable for the conservancy authority and other persons who have been informed of the proposed modification to consider it and comment upon it.

(9) The confirming authority for the purposes of this article and of section 236 (procedure for byelaws) of the 1972 Act in its application to the conservancy authority is the Secretary of State.

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(21) 1972 c. 70.

(10) Schedule 2 to this Order (which contains provisions for the general management and regulation of the estuary)—

- (a) has effect from the date of this Order coming into force as if its provisions were byelaws made by the conservancy authority under this article and subsequently confirmed by the Secretary of State; and
- (b) ceases to have effect upon the confirmation of byelaws made under this article.

### **General directions to vessels**

13.—(1) The conservancy authority may, after consultation with—

- (a) the Dee Estuary Consultative Committee,
- (b) the Chamber of Shipping, and
- (c) the Royal Yachting Association,

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 estuary.

(2) The conservancy authority may in particular give directions for, but not limited to, any of the following purposes—

- (a) for designating areas, routes or channels in the estuary 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 estuary by a vessel which for any reason would be, or be likely to become, a danger to other vessels in the estuary, or to persons, property, flora or fauna in the estuary; and
  - (ii) entry into, or navigation within, the channels during any temporary obstruction of them;
- (e) for prohibiting entry into, or movement in, the estuary or its approaches by vessels, other than small vessels, at times of poor visibility due to the weather or the presence of dust or smoke, subject to the condition in sub-paragraph (f);
- (f) the condition mentioned in sub-paragraph (e) is that no direction given under that sub-paragraph prevents the entry into the estuary or its approaches of any vessel seeking refuge from the stress of weather;
- (g) for requiring the master of a vessel to give to the harbour master information relating to the vessel which is reasonably required by the harbour master for effecting any of the purposes of this paragraph.

(3) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction; or
- (b) to the whole of the estuary or to a part designated, or for which the designation is provided for, in the direction; or
- (c) at all times or at times designated, or for which the designation is provided for, in the direction,

and every direction given under this article must specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(4) The conservancy authority may, after consultation with the Dee Estuary Consultative Committee, the Chamber of Shipping and the Royal Yachting Association, except in cases of emergency, revoke or amend any general direction given under this article.

### **Publication of general directions**

**14.**—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction must, except in an emergency, be published by the conservancy authority as soon as reasonably practicable on the conservancy authority's website and once—

- (a) in a newspaper specialising in shipping news, or
- (b) if there is no newspaper of the description referred to in paragraph (a), in a suitable local newspaper.

(2) If the notice mentioned in paragraph (1) relates to the giving or amendment of a direction, the notice must state a place at which copies may be inspected and purchased, and the price of them.

(3) 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 conservancy authority to be appropriate.

### **Special directions**

**15.**—(1) The harbour master may give a direction under this article in respect of a vessel anywhere in the estuary 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) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (d) prohibiting or restricting the use of fires or lights, including false lights;
- (e) specifying requirements as to the use of ballast;
- (f) requiring the removal of the vessel from any part of the estuary for one or more of the following reasons—
  - (i) the vessel is on fire;
  - (ii) the vessel is in such condition as to be liable to become immobilised, waterlogged, or to sink;
  - (iii) the vessel is making an unlawful use of the estuary or interfering with the reasonable use or enjoyment of it by other vessels or persons, or the dispatch of business in it;
  - (iv) the vessel's removal is necessary to enable maintenance or repair work to be carried out in the estuary;
  - (v) the vessel's removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property; or
  - (vi) the vessel's removal is considered by the harbour master to be necessary to avoid danger to flora or fauna or to geological or physiographical features of the harbour.

(2) In deciding whether to give a direction under this article in any particular case, the harbour master must have regard to all the circumstances of that case and, in particular, to the safety of any person or vessel, whether in or outside the harbour, and including the vessel which would be the subject of the direction.

(3) In an emergency the harbour master may give a special direction applicable to all vessels or to a particular class of vessel for any of the purposes mentioned in paragraph (1).

(4) A special direction may be given orally or in writing or in any manner considered by the harbour master to be appropriate.

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

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

**16.**—(1) A person who fails to comply with a general direction or a special direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Without prejudice to any other defence, it is a defence for a person charged with an offence under paragraph (1) that the person had reasonable grounds for believing that to comply with the direction in question would have endangered life or imperilled the safety of any vessel or its cargo, or that for other reasons compliance with the direction was impracticable.

#### **Enforcement of special directions**

**17.**—(1) Without prejudice to any other remedy available to the conservancy authority, 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.

(3) The powers of paragraph (2) must 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.

(4) Expenses incurred by the conservancy authority in the exercise of the powers conferred by paragraph (1) are recoverable by it as if they were a charge of the authority in respect of the vessel.

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

**18.** The giving of a general direction or a special direction does 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—

(a) that vessel,

(b) persons on board that vessel,

(c) cargo on board that vessel, or

(d) any other person or property.

## **PART 3**

### **CHARGES**

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

**19.** In addition to its power to demand ship, passenger and goods dues under section 26 (charges for services or facilities) of the 1964 Act, the conservancy authority may demand, take and recover

such reasonable charges for services and facilities provided by it within the estuary as it may from time to time determine.

### **Payment of charges**

**20.**—(1) The charges which the conservancy authority is for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment must be payable before the removal from the estuary 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 authority may from time to time specify in its published list of charges.

(2) Charges payable to the conservancy authority shall be payable by the owner of any vessel or goods in relation to which the charges are payable.

(3) Where charges payable to the conservancy authority may be recovered by it from more than one person, the persons from whom they may be recovered are jointly and severally liable.

(4) Without prejudice to the generality of paragraph (1), the terms and conditions as to the payment of charges which the conservancy authority may from time to time specify—

- (a) may include the time when a charge falls due for payment, and
- (b) may require such information to be given to the authority by—
  - (i) the owner or master of a vessel, or
  - (ii) a person using a service or facility of the authority,

as the conservancy authority may require in connection with the assessment or collection of a charge.

### **Compounding arrangements and rebates**

**21.**—(1) The conservancy authority may confer total or partial exemptions from, or allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption, rebate or composition.

(2) Nothing in section 30 (duty to make available for inspection etc. certain charges) of the 1964 Act requires the conservancy authority 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 that list.

### **Deposit for charges**

**22.**—(1) The conservancy authority may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the authority, 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 conservancy authority may detain in the estuary 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**

**23.**—(1) A person who by agreement with the conservancy authority collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession has a lien on those goods for the amount paid or security given.

(2) A person being a wharfinger or carrier who does not have personal liability for the payment of charges may pay or by agreement with the conservancy authority give security for charges on goods in that person's custody.



(3) Where paragraph (2) applies, the person has a like lien on the goods for the amount of the charges as that person would have in respect of their charges for safe custody or carriage of the goods, as the case may be.

### **Exemptions from dues**

**24.**—(1) Except as may be agreed between the conservancy authority and the Secretary of State or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the conservancy authority to levy dues authorises it to levy dues on—

- (a) a vessel—
  - (i) belonging to or in the service of Her Majesty or any member of the Royal Family;
  - (ii) in the service of HM Revenue and Customs 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; or
  - (v) belonging to or in the service of Trinity House;
- (b) HM Revenue and Customs or an 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, HM Revenue and Customs;
- (c) an officer of HM Revenue and Customs or any other person employed in their service; or
- (d) a person employed by the Secretary of State for Defence while in the execution of that person's duty.

(2) An officer of the Department for Transport in the execution of that officer's duty is at all times exempt from dues in respect of a vessel belonging to or in the service of the Department.

(3) No dues are payable by any small vessel.

(4) No dues are payable by any vessel navigating—

- (a) from Dee Locks on the Shropshire Union Canal to Chester Weir, or
- (b) to Dee Locks on the Shropshire Union Canal from Chester Weir.

(5) No dues in respect of passengers or goods may be demanded by the conservancy authority in relation to any vessel that is inbound from the sea to the port or outbound for the sea from the port.

(6) In this article "dues" means ship, passenger and goods dues which the conservancy authority may demand under section 26 (charges for services or facilities) of the 1964 Act.

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

**25.** The harbour master may prevent the removal or sailing from the estuary of any vessel until evidence has been produced to the harbour master of the payment of any charges payable in respect of—

- (a) the vessel,
- (b) any passengers on it, or
- (c) any goods carried by it.

## PART 4

### CONTROL OF WORKS AND DREDGING IN ESTUARY

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

**26.**—(1) Subject to paragraph (4), no person other than the conservancy authority may in the estuary—

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

unless that person is licensed to do so as provided in paragraph (2).

(2) The person mentioned in paragraph (1)—

- (a) must—
  - (i) in the case of works, have a works licence, and
  - (ii) in the case of dredging, have a dredging licence,
- (b) must comply with all the terms and conditions, if any, upon which the licence is granted, and
- (c) must carry out the works or dredging in accordance with plans, sections and particulars approved, as the case may be, under—
  - (i) article 28 (licensing of works), or
  - (ii) article 29 (licence to dredge).

(3) The conservancy authority may by notice require a person who contravenes this article, within a reasonable time specified in the notice—

- (a) to remove, abate or rectify any work, operation or omission to which the contravention relates, and
- (b) to restore the site of that work, operation or omission to its former condition, and

if the person fails to comply with the notice, the authority may carry out the works required to restore the site and may recover from that person the cost of so doing.

(4) Nothing in this article applies to—

- (a) any operations or works specifically authorised by any enactment;
- (b) any operations or works of a statutory undertaker; or
- (c) any routine maintenance works that in the opinion of the conservancy authority will have no detrimental impact on the safety of navigation in the estuary.

(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.

#### **Control of certain operations and works of statutory undertakers**

**27.**—(1) This article applies to any operations or works in the estuary 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 conservancy authority and has supplied the authority with such particulars as it 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 conservancy authority of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies must be carried out in accordance with any directions which may from time to time be given by the conservancy authority to the statutory undertaker, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in consequence of the carrying out of the 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**

**28.**—(1) The conservancy authority may upon such terms and conditions as it thinks fit grant to any person a licence to construct, place, alter, renew or maintain works in the estuary 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 conservancy authority 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 them 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 conservancy authority may require modifications to be made to the plans, sections and particulars submitted to it by the applicant.

(4) The conservancy authority may require an applicant for a works licence, on making the application for it, 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 conservancy authority may require a licensee, being an applicant to whom a licence has been granted or the applicant's successor, where works are constructed pursuant to the licence, to pay a reasonable fee in respect of the authority's administrative expenses and overheads in supervising or inspecting, where necessary, the construction or maintenance of the works.

(6) If the conservancy authority decides to grant a works licence it must give notice of its decision to the applicant.

(7) Where the conservancy authority refuses to grant a works licence which has been applied for it must give reasons in writing for its refusal.

(8) Where the conservancy authority—

- (a) grants a works licence upon terms or conditions, or
- (b) requires any modification in the plans and particulars,

it 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) the conservancy authority does not notify to the applicant its decision whether to grant a works licence, it must be deemed to have refused the application.

(10) Articles 31 to 35 apply in relation to the holder of a works licence with respect to the works which are authorised by the licence as they do in relation to the conservancy authority with respect to

tidal works, with the modification that for all references in those articles to the conservancy authority or authority, as the case may be, there are substituted references to the holder of the works licence.

(11) The grant of a licence under this article has effect for the purposes of article 26 (restriction of works and dredging) and confers no other authority for the carrying out of the operations covered by the licence.

(12) In the carrying out of any works or operations under 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**

**29.**—(1) The conservancy authority may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the estuary.

(2) Application for a dredging licence must be made in writing to the conservancy authority 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 conservancy authority may require modifications to be made to the plans, sections and particulars submitted to it by the applicant.

(4) Paragraphs (4) to (9) and (12) of article 28 (licensing of works) 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 26 (restriction of works and dredging) and confers no other authority for the carrying out of the operations covered by the licence.

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

**30.**—(1) Where—

- (a) the conservancy authority has refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or
- (b) the conservancy authority—
  - (i) has granted a licence mentioned in sub-paragraph (a) upon terms or conditions, or
  - (ii) has required modifications to be made to the plans, sections or particulars submitted by the applicant, and

the applicant is aggrieved by the authority's decision as to such terms or conditions, or as to such modifications,

the applicant may appeal to the Secretary of State.

(2) An appeal under paragraph (1) must be made within 28 days from—

- (a) the date on which the conservancy authority gives notice of its decision, or
- (b) the date on which it is deemed—
  - (i) under article 28(9) in relation to a works licence, or
  - (ii) under articles 28(9) and 29(4) in relation to a licence to dredge,
 to have refused the application.

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

(4) A person who appeals to the Secretary of State under this article must at the same time send a copy of the notice of appeal to the conservancy authority.

(5) The conservancy authority—

- (a) must as soon as reasonably practicable, but not later than 28 days from receipt of the notice of appeal, provide all relevant documents to the Secretary of State,
- (b) may submit to the Secretary of State its written observations on the appeal, and
- (c) if it wishes to submit observations under sub-paragraph (b), must do so not later than 28 days from the receipt of the notice of appeal.

(6) Where an appeal has been made under this article the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including—

- (a) amendments to the terms and conditions to which the licence is subject, or
- (b) modifications of plans, sections or particulars.

(7) The conservancy authority must give effect to any decision given, or requirement made, by the Secretary of State under paragraph (6).

### **Lights on tidal works during construction**

**31.**—(1) The conservancy authority must at or near a tidal work, during the whole time of the construction, extension, enlargement, alteration, replacement or re-laying in respect of such work—

- (a) exhibit every night from sunset to sunrise such lights, if any, and
- (b) take such other steps for the prevention of danger to navigation,

as the Secretary of State may from time to time direct.

(2) If the conservancy authority fails to comply with any direction given under paragraph (1), it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**32.**—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the conservancy authority must—

- (a) as soon as reasonably practicable notify Trinity House, and
- (b) 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 conservancy authority fails—

- (a) to notify Trinity House as required by paragraph (1), or
- (b) to comply with any requirement of a direction given under paragraph (1),

the authority is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**33.**—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the conservancy authority at its own expense either—

- (a) to repair and restore the work or any part of it, or

(b) to remove the work and restore the site to its former condition,  
in either case to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting—

- (a) partly of a tidal work, and
- (b) partly of works on or over land above the level of high water,

is abandoned or allowed 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 Secretary of State 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 paragraph (1) is served upon the conservancy authority, it has 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 the Secretary of State in so doing is recoverable from the conservancy authority.

#### **Survey of tidal works**

**34.** If the Secretary of State considers it expedient to do so, the Secretary of State may order a survey and examination of—

- (a) a tidal work, or
- (b) the site upon which it is proposed to construct a tidal work,

and any expenditure incurred by the Secretary of State in relation to any such survey and examination is recoverable from the conservancy authority.

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

**35.—(1)** After the completion of a tidal work the conservancy authority must, at the outer extremity of that work—

- (a) exhibit every night from sunset to sunrise, such lights, if any, and
- (b) 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 conservancy authority fails to comply in any respect with a direction given under paragraph (1) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

#### **Local inquiries**

**36.—(1)** The Secretary of State may cause to be held such inquiries as may be considered necessary in regard to the exercise of any powers or duties conferred or imposed upon the Secretary of State and the giving of any consent or approval under this Order.

(2) Section 250(2) to (5) of the Local Government Act 1972(22), applies to an inquiry held under paragraph (1) as if it were an inquiry held under section 250(1) of that Act and the conservancy authority were a local authority.

### **Defence of due diligence**

**37.**—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it is a defence for the conservancy authority to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 31 (lights on tidal works during construction),
- (b) article 32 (provision against danger to navigation), and
- (c) article 35 (permanent lights on tidal works).

(3) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or default of another person, the conservancy authority is not, without permission of the court, entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has served on the prosecutor a notice in writing giving such information as is in its possession identifying, or assisting in the identification of, that other person.

### **Boarding of vessels**

**38.**—(1) Subject to paragraph (2), a duly authorised officer of the conservancy authority may, on producing that officer's authority if so required, enter and inspect a vessel in the estuary—

- (a) for the purposes of—
  - (i) any enactment relating to the estuary (including any enactment contained in subordinate legislation), or
  - (ii) any byelaw of the conservancy authority relating to the estuary, including the enforcement of it; and
- (b) to prevent or extinguish fire.

(2) Except in an emergency, no entry is to be made under this article unless notice in writing has first been given to—

- (a) the owner, or
- (b) the person appearing to have charge,

of the vessel at least 48 hours in advance.

(3) A copy of this article must be annexed to any notice given under paragraph (2).

### **Obstruction of officers**

**39.**—(1) Any person who—

- (a) intentionally obstructs an officer of the conservancy authority acting for the purposes of this Order;

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(22) 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. Article 2 of and Schedule 1 to, The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) transferred the functions of the Secretary of State under section 250 of the Local Government Act 1972, in so far as exercisable in relation to Wales, to the National Assembly for Wales. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

- (b) without reasonable excuse fails to comply with a requirement properly made by a duly authorised officer of the conservancy authority; or
- (c) without reasonable excuse fails to give an officer of the conservancy authority any information which the officer may reasonably require for the purpose of the performance of that officer's functions,

is 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 the information mentioned in paragraph (1)(c), makes a statement which that person knows to be false is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Crown Rights**

**40.**—(1) Nothing in this Order prejudices or derogates from any estate, right, power, privilege, authority or exemption of the Crown.

(2) In particular, nothing in this Order authorises any person to take, use, enter upon or in any manner interfere with, any land or interest in land (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to—

- (a) 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) 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.

(3) A consent under paragraph (2) may be given unconditionally, or subject to terms and conditions.

### **Saving for Trinity House**

**41.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **For the protection of the company**

**42.** Schedule 3 to this Order has effect for the protection of the company.

### **For the protection of the Mersey Docks and Harbour Company**

**43.** Nothing in this Order prejudices or derogates from the exercise by the Mersey Docks and Harbour Company of any of its rights, powers, duties or privileges.

### **Repeals**

**44.**—(1) The provisions of the 1889 Act mentioned in paragraph (2) are repealed.

(2) The provisions of the 1889 Act referred to in paragraph (1) are the entire Act except sections 35 and 36 and so much of section 7 as applies to those sections for the purposes of their interpretation.



Signed by authority of the Secretary of State for Transport

19th April 2023

*Mike Alcock*  
Head of Maritime Commerce and Infrastructure  
Division  
Department for Transport

## SCHEDULES

### SCHEDULE 1

Article 12(1) and (2)

#### PURPOSES FOR WHICH BYELAWS MAY BE MADE

1. The purposes mentioned in article 12(2) for which the conservancy authority may make byelaws include any of the following—

- (a) regulating the use of any works and facilities provided by the authority;
- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the estuary and to any aids to navigation which are used in connection with the estuary;
- (c) regulating the conduct of all persons in the estuary, 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 estuary;
- (e) preventing and removing obstructions or impediments within the estuary;
- (f) regulating or prohibiting the use in the estuary, or on board any vessel in the estuary, of—
  - (i) fires,
  - (ii) lights, including false lights,
  - (iii) tobacco or any other substance, equipment, tools or appliances which the authority considers involve a risk of fire, explosion or chemical reaction;
- (g) requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the estuary;
- (h) regulating the admission to, the movement within, and the departure of vessels from the estuary, or the removal of vessels, and for the good order and government generally of vessels while within the estuary;
- (i) regulating the navigation, berthing and mooring of vessels within the estuary and their speed and manner of navigation;
- (j) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the estuary;
- (k) prescribing the lights and signals to be exhibited or made—
  - (i) by vessels or other devices used for marking obstructions within the estuary; or
  - (ii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the estuary;
- (l) prohibiting or regulating the discharge into the estuary of any material or substance;
- (m) regulating or prohibiting fishing for marine creatures of any type and by whatever means from—

- (i) any pier, jetty, wharf, breakwater or other installation or structure of any kind within the estuary,
  - (ii) any vessel within the estuary, or
  - (iii) the foreshore,
- where, in the opinion of the authority, such fishing may interfere with the safety of navigation in the estuary;
- (n) regulating or prohibiting bathing, and for securing the protection of bathers, within the channels of the estuary;
  - (o) regulating or prohibiting the use of vehicles on the foreshore within the estuary;
  - (p) regulating the berthing, mooring and anchoring of vessels in any part of the estuary;
  - (q) regulating the use within the estuary of yachts, sailing boats, sailboards, rowing boats, kite surfers, pleasure craft, windsurfers, personal watercraft and other small craft;
  - (r) regulating the holding of regattas and other public events in the estuary;
  - (s) regulating or prohibiting the activities within the estuary of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar pursuits;
  - (t) preventing the disposal of any waste matter except at places or in a manner prescribed by the authority;
  - (u) regulating the conveyance, landing, laying down, discharge or removal of goods, gear, equipment, timber, logs, floats, or rafts of timber or other items within the estuary;
  - (v) regulating the exercise of the powers vested in the harbour master;
  - (w) making the carrying out of specified estuary operations, or the conduct of persons in the estuary, subject to the approval with or without conditions, control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such approval, condition, control or direction;
  - (x) for the conservation of the natural beauty of all or any part of the estuary or of any of the fauna, flora or geological or physiographical features in the estuary and all other natural features; and
  - (y) for the purposes specified in section 83 (byelaws) of the 1847 Act.

**2. In this Schedule—**

- (a) “kite surfers” mean boards with a kite or kites designed to be operated by a person or persons standing upright on them;
- (b) “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—
  - (i) by means of a handlebar-operated linkage system (with or without a rudder at the stern); or
  - (ii) by the person or persons riding the craft using their body weight for the purpose; or
  - (iii) by a combination of the methods referred to in sub-paragraphs (i) and (ii);
- (c) “signals” includes sound signals; and
- (d) “windsurfers” mean boards with a sail or sails designed to be operated by a person or persons standing upright on them.

## SCHEDULE 2

Article 12(10)

### REGULATION OF THE ESTUARY

#### PART 1

##### PRELIMINARY

###### Interpretation

1. In this Schedule—

“the Admiralty Charts” means the Admiralty Charts for the River Dee, its estuary and its approaches published at the date of this Order coming into force and numbered 1953 and 1978<sup>(23)</sup>;

“the Collision Regulations” means the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996<sup>(24)</sup> or such other regulations for the prevention of collisions as may from time to time be made under sections 85 (safety and health on ships) and 86 (supplementary provisions for section 85) of the 1995 Act;

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

“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;

“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 have effect in addition to any general direction or any special direction given by the conservancy authority or the harbour master, so far as they are consistent with it, but are subject to the provisions of Schedule 3 to this Order.

#### PART 2

##### NAVIGATION

###### Vessel movements

3. The master of a vessel other than a small vessel must give prior notice to the harbour master or the harbour master’s agent of the vessel’s arrival at, departure from or movement within, the estuary. Declaration of particulars of vessel

4. The master of a vessel, other than a small vessel, arriving at the estuary must, if required by the harbour master, provide to the harbour master a declaration in the form to be obtained from the harbour master 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

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(23) Admiralty charts for the River Dee, its estuary and approaches can be bought from an Admiralty Chart Agent, details of these suppliers can be obtained at <https://www.admiralty.co.uk>.

(24) S.I. 1996/75, regulation 1 was amended by the Merchant Shipping (High Speed Craft) Regulations 2004 (S.I. 2004/302), Schedule 1, paragraph 16; regulation 6 was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), Schedule 4(1), paragraph 53.

**5.—(1)** Subject to sub-paragraph (2), the master of a vessel navigating in the estuary must navigate the vessel with such care and caution and at such speed and in such manner as not to—

- (a) endanger the lives of, or cause injury to, persons or damage to property,
- (b) obstruct or prejudice the navigation, manoeuvring, loading or discharging of vessels, or
- (c) cause unnecessary damage to moorings, the banks of the estuary or other property.

(2) Sub-paragraph (1) is without prejudice to the Collision Regulations.  
Vessels not to make fast to aids to navigation

**6.—(1)** Subject to sub-paragraph (2), the master of a vessel must not—

- (a) make fast the vessel to, or
- (b) knowingly cause or permit the vessel to lie against,  
any buoy, beacon or mark used for navigational purposes.

(2) Sub-paragraph (1) does not apply to vessels used for the purposes of—

- (a) erecting or placing,
- (b) altering,
- (c) discontinuing, or
- (d) removing,

aids to navigation in, or in any place immediately adjacent to, the estuary in accordance with the authority given by the harbour master.

Notification of accidents and deficiencies, etc.

**7.—(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 estuary,
- (b) is within, or about to enter, the estuary 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 channel,

must give immediate notice of that fact to the harbour master and, as soon as practicable following the giving of such notice, 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 must not move the vessel—

- (a) except to clear the channel, or
- (b) except to moor or anchor it in safety,

unless the master moves it 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 under sub-paragraph (1) in any manner that the harbour master considers appropriate.

(4) In sub-paragraph (2), “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 estuary, of being navigated or manoeuvred safely.

Vessels to have competent helmsman

**8.—(1)** Subject to sub-paragraph (2), the master of a vessel must ensure that—

- (a) it is steered at all times by a person competent to do so, and

*Status: This is the original version (as it was originally made).*

(b) no automatic devices or equipment are used for steering purposes unless attended by a competent helmsman.

(2) The requirement of sub-paragraph (1) to ensure that a vessel is steered at all times by a person competent to do so does 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 estuary as may be designated by the harbour master as suitable for training purposes.

(3) A person under the age of 16 years must not steer or navigate within the estuary 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 who is competent to steer or navigate such a vessel.

Master to remain on bridge

**9.** The master of a power-driven vessel under way must 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.

Use of whistles

**10.** A person must not use a whistle within the estuary except—

- (a) as a signal of distress,
- (b) to prevent collision in compliance with the Collision Regulations, or
- (c) 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

**11.—(1)** Subject to sub-paragraph (3), except with the permission of the harbour master, a vessel must not anchor—

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

(2) Without prejudice to sub-paragraph (1), if at any time the anchor of any vessel hooks any—

- (a) moorings,
- (b) electric cable,
- (c) moorings of buoys, or
- (d) pipe,

the master of the vessel must immediately give notice of it to the harbour master and must, if it is safe and practicable to do so, await the harbour master's instruction before proceeding to clear the same.

(3) Sub-paragraph (1)(b) does not apply to small vessels.  
Obstruction of the channels

- 12.** Except with the permission of the harbour master, a vessel must not lie or be—
- (a) moored,
  - (b) anchored,
  - (c) grounded,
  - (d) deposited, or
  - (e) run ashore,

in the channels.  
Shipkeepers

**13.—(1)** A vessel that is compelled or allowed to anchor in or near the channels must not be left at any time without a shipkeeper.

(2) For the purposes of sub-paragraph (1), a vessel is anchored near the channels if that vessel could at the extent of its swing and having regard to—

- (a) prevailing or anticipated weather conditions, and
- (b) the potential to drag the vessel's anchor,

infringe on the channels.

(3) In this paragraph, “shipkeeper” means a person charged with the care and safety of a vessel, in the absence of its master, which is compelled or allowed to anchor in or near the channels in accordance with sub-paragraph (1).

## PART 3

### BERTHING AND MOORING

Provision of proper fenders

- 14.—(1)** The—
- (a) master, and
  - (b) owner

of a vessel must ensure that it is provided with a sufficient number of fenders adequate for the size of the vessel.

- (2) When—
- (a) berthing,
  - (b) departing, or
  - (c) lying,

as the case may be, at or from a quay, or against other vessels, the master must 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

**15.** The master of a vessel must at all times keep the vessel properly and effectively moored when berthed or lying at any quay.

Vessels adrift

*Status: This is the original version (as it was originally made).*

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

Access to and egress from vessels

**17.** The master and the owner of a vessel, other than a small vessel, while berthed alongside a quay must—

- (a) provide and maintain a sufficient, safe and proper gangway for the access and egress of all persons having lawful business on the vessel, and
- (b) during the hours of darkness provide sufficient lighting to illuminate the whole length of the gangway.

Sufficiency of crew

**18.—**(1) Except with the permission of the harbour master, the master of a vessel other than a small vessel must at all times when that vessel is within the estuary ensure that—

- (a) the vessel is capable of being safely moved and navigated, and
- (b) there are sufficient crew or other competent persons readily available—
  - (i) to attend to the vessel's moorings,
  - (ii) to comply with any directions given by the harbour master for the unmooring, mooring and moving of the vessel, and
  - (iii) to deal, so far as is reasonably practicable, with any emergency that may arise.

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

Vessels to be kept in a movable condition

**19.—**(1) The master of a vessel, other than a small vessel lying at a recognised mooring or anchorage, must not, except where the vessel is lying aground, take any steps to render that vessel incapable of movement without first notifying the harbour master.

(2) Subject to the exception referred to in sub-paragraph (1) the master of a vessel must at all times keep the vessel so loaded and ballasted and in such condition that it is capable of being safely moved.

(3) Where a vessel is at any time not capable of being safely moved by means of its own propulsive machinery, the master or owner must inform the harbour master immediately and provide any further information which the harbour master may reasonably require.

Use of engines while vessel moored or berthed

**20.** The master of a vessel which is moored at a quay or attached to any mooring device must not permit the engines of the vessel to be worked in such a manner as to—

- (a) cause unnecessary injury or damage to the bed or banks of the estuary or to any other vessel or property, or
- (b) cause unnecessary disturbance or noise pollution to any other vessel or property.

Vessels not to make fast to unauthorised objects

**21.** A person must not make a vessel fast to any—

- (a) post,
- (b) quay,
- (c) ring,
- (d) fender, or
- (e) any other thing or place,



that is not assigned for that purpose.

Access across decks

**22.** The master of a vessel—

- (a) alongside a quay, or
- (b) alongside any vessel already berthed within the estuary,

must, if required to do so by the harbour master, give free access across the deck of the vessel for persons and goods to and from other vessels berthed alongside that vessel.

Lost anchor, cable or propeller

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

- (a) as soon as reasonably practicable give notice to the harbour master—
  - (i) of that occurrence and,
  - (ii) if possible, of the position of the anchor, chain, cable or propeller and, if the harbour master so directs, must cause it to be recovered as soon as reasonably practicable, and
- (b) in the case of an anchor or propeller, leave a buoy to mark the position of it if this is known.

## PART 4

### GENERAL

Inspecting facilities, etc., to be made available to harbour master

**24.** The master of a vessel must, so far as may be required by the harbour master in the exercise of the harbour master's duties, afford the harbour master access to the vessel or any part of it and provide all reasonable facilities for its inspection and examination.

Navigation under influence of drink or drugs prohibited

**25.—**(1) This paragraph applies to a person who—

- (a) is on board a ship which is under way,
- (b) is exercising, or purporting to exercise, a function in connection with the navigation of the ship, and
- (c) is not a person to whom section 78 or 79 (offences committed by professional staff on-duty and professional staff off-duty) of the 2003 Act applies.

(2) A person to whom this paragraph applies commits an offence if that person's ability to exercise the function mentioned in sub-paragraph (1)(b) is impaired because of drink or drugs.

(3) A person to whom this paragraph applies commits an offence if the proportion of alcohol in that person's breath, blood or urine exceeds the limit prescribed for the purposes of Part 4 (Shipping: alcohol and drugs) of the 2003 Act.

(4) In this paragraph, "the 2003 Act" means the Railway and Transport Safety Act 2003(**25**).

(5) This paragraph ceases to have effect on the date that section 80 (offences committed by non-professionals) of the 2003 Act comes into force.

Vessels not to be fumigated without permission

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

Discharges into estuary prohibited

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(25) 2003 c. 20.

**27.**—(1) A person must not discharge any matter or cause or permit any matter to be discharged into the waters or on to the bed of the estuary 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 estuary.

(2) The provisions of this paragraph do 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<sup>(26)</sup>;
- (b) anything specifically authorised by or exempted from any other enactment, or authorised by a consent given under, any other enactment.

#### Fishing

**28.**—(1) A person fishing in the estuary must comply with directions given to that person by the harbour master.

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

- (a) in the channels in contravention of a direction of the harbour master; or
- (b) by trawl, nets or dredges within 100 metres of the line of any cable or pipe laid down in the estuary.

(3) A person must not 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 any vessel or mooring.

(4) All surface set nets and such other apparatus and equipment which could impede surface navigation in the estuary must be attended at all times.

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

#### No dragging or grappling without permission

**29.** Without prejudice to paragraph 23 (lost anchor, cable or propeller), a person must not—

- (a) drag, dredge or grapple for any material or article, or
- (b) remove any material or article from the bed of the estuary,

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

**30.** The owner of a vessel greater than 10 metres in length which is not registered as a ship under Part II of the 1995 Act and marked accordingly must ensure that the vessel is marked conspicuously with its name or other means of identification and harbour of origin (if any).

#### Abandonment of vessels prohibited

**31.**—(1) A person must not abandon a vessel on the banks or shore of the estuary.

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

#### Water-skiing, aquaplaning and similar activities

**32.**—(1) A person must not engage or take part in water-skiing, aquaplaning or any similar activity in the main channels.

(2) Without prejudice to sub-paragraph (1), a person must not engage or take part within the estuary in water-skiing, aquaplaning or any similar activity except—

- (a) with the written permission of the harbour master given either specifically or generally,

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(26) 1971 c. 60.

- (b) only in such areas as may be designated by the conservancy authority, and
- (c) in accordance with such 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, must 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 must 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.

Parakiting, parascending and similar activities

**33.** A person must not engage or take part in parakiting, parascending or any similar activity in any part of the estuary except—

- (a) with the written permission of the harbour master given either specifically or generally,
- (b) only in such areas as may be designated by the conservancy authority, and
- (c) in accordance with such reasonable terms and conditions as the harbour master may specify.

Diving and underwater swimming

**34.**—(1) Subject to sub-paragraph (2), a person, other than a duly authorised employee, contractor or agent of the conservancy authority, must not swim underwater or dive in the channels without the written permission of the harbour master.

(2) Sub-paragraph (1) does not apply to persons swimming underwater or diving for the purposes of undertaking repairs to recreational vessels or clearing obstructions to recreational vessels and their anchors.

(3) Subject to sub-paragraph (4), the conservancy authority may only give permission to dive and swim underwater under sub-paragraph (1) to a person who is—

- (a) a member of a club or association which is either—
  - (i) a registered branch of the British Sub-Aqua Club,
  - (ii) a registered club of the Sub-Aqua Association,
  - (iii) a Professional Association of Diving Instructors registered diving school, or
- (b) a member of any other recognised and competent organisation.

(4) Permission for the purposes of sub-paragraph (1) may be given by the conservancy authority to a club or association mentioned in sub-paragraph (3) for the benefit of those of its members specified in the permission.

(5) Any permission granted under sub-paragraph (1) may be given subject to such reasonable terms and conditions, including as to the payment of charges, as the harbour master may consider appropriate.

(6) Any person diving or swimming underwater in the channels must comply with—

- (a) any terms and conditions that are imposed on that person, and
- (b) any directions given to that person,

by the harbour master.

Regattas, races and similar events

*Status: This is the original version (as it was originally made).*

**35.**—(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 estuary, must—

- (a) supply to the harbour master such information with regard to the event as the harbour master may reasonably require,
- (b) seek the prior consent of the harbour master to the holding of the event or the part of such event within the estuary, which consent must not be unreasonably withheld.

(2) A person must not organise or conduct any of the events referred to in sub-paragraph (1) except—

- (a) on such courses,
- (b) at such times, and
- (c) in accordance with such other conditions,

as the harbour master may reasonably specify for the purposes of this paragraph.

Aids to navigation

**36.**—(1) A person must not—

- (a) erect,
- (b) exhibit,
- (c) alter,
- (d) tamper with, or
- (e) remove,

any of the items mentioned in sub-paragraph (2) without the written permission of the conservancy authority.

(2) The items referred to in sub-paragraph (1) include any—

- (a) light,
- (b) fog signal,
- (c) buoy,
- (d) beacon,
- (e) mark,
- (f) radar reflector, or
- (g) other object,

within or adjoining the estuary which is used as an aid to navigation in the estuary.

Assistance to fire and other services

**37.** The master of a vessel must 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

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

Obstruction of officers of the conservancy authority

**39.** A person must not intentionally obstruct any officer or employee of the conservancy authority in the execution of that officer's or employee's duties.

Firearms

**40.**—(1) Except with the prior consent of the harbour master, a firearm or air-gun must not be discharged from any vessel within the estuary otherwise than by—

- (a) a member of a police force, or
- (b) a member of Her Majesty's naval or military forces,

properly authorised to do so in the course of that member's duty.

(2) A ship's gun on board any vessel lying within the estuary must not 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.

(3) The gun mentioned in sub-paragraph (2) must not be discharged except as a signal of distress.  
Silencers

**41.** A person, being the master of a vessel propelled by an internal combustion engine, must not use that vessel in the estuary unless the engine is fitted with 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

**42.**—(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 conservancy authority or the harbour master in the exercise of the powers conferred upon the authority or harbour master by this Schedule, is 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 26 (vessels not to be fumigated without permission);
- (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 is guilty of an offence.

(3) The other person referred to in sub-paragraph (2) 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.

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

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

(5) If, in any case, the defence provided by sub-paragraph (4)(a) involves the allegation that the commission of the offence was due to the act or default of another person, the person charged is not, without leave of the court, entitled to rely on that defence unless that person satisfies the condition set out in sub-paragraph (6).

(6) The condition referred to in sub-paragraph (5) is that within a period ending seven clear days before the hearing, the person must serve on the conservancy authority a notice in writing giving such information identifying, or assisting in the identification of, the other person as is in the possession of the person charged.

SCHEDULE 3

Article 42

PROTECTIVE PROVISIONS FOR THE COMPANY

*Limitation on the conservancy authority's powers*

1. The conservancy authority—

(a) must not—

- (i) erect,
- (ii) place,
- (iii) alter,
- (iv) discontinue, or
- (v) remove,

aids to navigation within the port under article 6 (aids to navigation),

(b) must not—

- (i) provide,
- (ii) place,
- (iii) lay down,
- (iv) maintain,
- (v) renew,
- (vi) use,
- (vii) have, or
- (viii) remove,

moorings, buoys or similar apparatus within the port under article 8 (moorings),

(c) must not—

- (i) deepen,
- (ii) dredge,
- (iii) scour,
- (iv) cleanse,
- (v) alter, or
- (vi) improve,

the bed, shores or channels within the port under article 10 (power to dredge), and

(d) must not—

- (i) blast rock, or
  - (ii) use, appropriate or dispose of material,
- within the port under article 10 (power to dredge),

without the consent of the company, which consent is not to be unreasonably withheld.

2. Article 26 (restriction of works and dredging) does not apply to the company—

(a) with respect to the—

- (i) construction,
- (ii) alteration,

- (iii) renewal, or
    - (iv) extension,
  - of works in the port, or
  - (b) with respect to the dredging of waters within the port.
- 3. The conservancy authority must not, without the consent of the company—
  - (a) grant a licence, under article 8 (moorings), for the—
    - (i) placing,
    - (ii) laying down,
    - (iii) maintenance,
    - (iv) renewal, use, or
    - (v) having,
  - of any mooring within the port,
  - (b) grant a works licence for the—
    - (i) construction,
    - (ii) alteration,
    - (iii) renewal, or
    - (iv) extension,
  - of works within the port,
  - (c) grant a dredging licence for the—
    - (i) deepening of,
    - (ii) widening of,
    - (iii) dredging of,
    - (iv) taking up or collection of material from,
    - (v) the bed or foreshore within the port, or
  - (d) dispose of any materials within the port under article 29 (licence to dredge).
- 4. The company is not required to pay any fee under article 8 (moorings) for the—
  - (a) placing,
  - (b) laying down,
  - (c) maintenance, renewal,
  - (d) use, or
  - (e) having,
- of any mooring within the port.

5.—(1) Subject to sub-paragraphs (2) and (3), any difference arising between the conservancy authority and the company in respect of the matters set out in this Schedule must be determined by an arbitrator to be agreed upon between the parties.

(2) If the parties cannot agree on an arbitrator, the arbitrator is to be appointed by the President of the Institution of Civil Engineers on the application of either party.

(3) The party making an application under sub-paragraph (2) must give notice in writing to the other party prior to making the application.

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## EXPLANATORY NOTE

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

This Order, made on the application of the Natural Resources Body for Wales (“the conservancy authority”), amends and modernises its powers of management and regulation as conservancy, harbour and local lighthouse authority for the estuary of the river Dee and provides for—

- (1) The jurisdiction and general functions and powers of the conservancy authority (article 4).
- (2) The establishment of a consultative committee, with whom the conservancy authority must consult on all matters substantially affecting the conservancy, maintenance, protection, regulation, operation, management and improvement of the estuary and its navigation (article 5).
- (3) Powers relating to aids to navigation (article 6) and the removal of obstructions to the use of the estuary (article 7).
- (4) Powers relating to moorings (article 8), the repair of landing places (article 9), dredging (article 10) and the disposal of wrecks (article 11).
- (5) Powers to make byelaws (article 12(1) to (9) and Schedule 1), to regulate the use of the Dee estuary (article 12(10) and Schedule 2) and to give general directions (article 13) and special directions (article 15).
- (6) A modern suite of charging powers (articles 19 to 25) including exemptions from harbour dues (article 24) and the prevention of sailing of vessels (article 25).
- (7) The restriction of works and dredging in the estuary without a licence from the conservancy authority (article 26) and the control of certain works by statutory undertakers within the estuary (article 27).
- (8) Powers to grant licences for works (article 28) and for dredging (article 29) within the estuary.
- (9) The lighting of any tidal works during construction (article 31) and upon completion of those works (article 35).
- (10) Powers to enter and inspect vessels within the estuary (article 38) and creates an offence of obstructing officers of the conservancy authority (article 39).
- (11) Savings for the Crown (article 40), Trinity House (article 41) and the Mersey Docks and Harbour Company (article 43).
- (12) The protection of Mostyn Docks Limited as statutory harbour authority for the Port of Mostyn (article 42 and Schedule 3).
- (13) The repeal of certain provisions of the Dee Conservancy Act 1889.

An impact assessment has not been prepared for this instrument as there is no, or no significant impact predicted on business, charities, voluntary bodies or the public sector.

This Order is published on the UK legislation website [www.legislation.gov.uk](http://www.legislation.gov.uk).