
STATUTORY INSTRUMENTS

2023 No. 675

The Cornwall Harbours Harbour Revision Order 2023

PART 6

MISCELLANEOUS AND GENERAL

Power to dredge

50.—(1) The Council may, as appears to it to be necessary or desirable for the purposes of the undertaking, deepen, widen, dredge, scour, cleanse, alter and improve the harbours below the level of high water.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council may think fit.

(3) No such materials shall be laid down or deposited in contravention of the provisions of any enactment as respects to the disposal of waste.

Power to lay moorings

51.—(1) The Council may provide, place, lay down, maintain, retain, renew, use, have and remove such moorings within the harbours—

- (a) on land owned or leased by it; and
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbours,

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

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Council such reasonable charges as the Council may from time to time prescribe.

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

(4) The Council may give notice in writing to the person having the control of any vessel using any mooring in the harbours at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Council to provide moorings in accordance with paragraph (1).

(5) The Council must offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by it under paragraph (1) as soon as such mooring has been laid down.

(6) If any person fails to comply with a notice given by the Council under this paragraph, the Council 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.

Power to licence moorings

52.—(1) The Council may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, retain, renew, use and have existing and future moorings, for vessels in the harbours.

(2) Nothing in any licence granted under paragraph (1) shall entitle a person to place, lay down, maintain, retain, renew or use and have any mooring on land not owned or leased by that person or by the Council or which that person is not entitled to use for that purpose.

(3) A licence granted under paragraph (1) shall be valid only for a period of a maximum of one year commencing with the date on which it is granted.

(4) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(5) In respect of moorings already lawfully laid down in the harbours at the date this Order comes into force ('an original mooring'), a licence under paragraph (1) must be obtained by the owner or user of the mooring within three months of that date and thereafter renewed annually.

(6) In considering an application for a licence under paragraph (1) made in respect of an original mooring the Council must not refuse to grant a licence to retain the original mooring in the same location as situated at the date of this Order unless it is satisfied that the placing, laying down, maintenance, retention, renewal or use of the original mooring to which the application relates would constitute a danger to or interfere with the navigation of vessels in the harbours.

Offences as to moorings

53.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbours;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbours except at a mooring provided or licensed by the Council under article 51 (power to lay moorings) or 52 (power to licence moorings);
- (d) places, lays down, maintains, retains, renews or has in the harbours any mooring not provided or licensed by the Council under this article,

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

(2) If any person commits an offence under sub paragraph (1)(d), the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.

(3) In articles 51 (power to lay moorings), 52 (power to licence moorings) and this article "mooring" includes any buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience used or capable of being used for the mooring of vessels.

Development of land etc.

54.—(1) The Council may, subject to obtaining the necessary rights in or over land—

- (a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbours;
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbours,

provided that it is conducive to the improvement, maintenance, operation or management of the harbours in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the company referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

Powers to grant tenancies and dispose of land

55.—(1) The Council may, for the purposes of or in connection with the carrying on of the undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbours for such period, at such rents and other considerations and on such terms and conditions as it thinks fit.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Council other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of Schedule 2 to the Act of 1964 (functions which cannot be delegated under a power conferred by a harbour revision order).

(3) The Council may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery, equipment or other property vested in it if it considers that—

- (a) the property is surplus to that which is required for the purpose of the harbours; or
- (b) it would conduce to the improvement, maintenance, operation or management of the harbours in an efficient and economical manner for the property to be held by a person other than the Council,

for such consideration and on such terms and conditions as it thinks fit.

Power to appropriate lands and works for particular uses, etc.

56.—(1) Notwithstanding anything in any statutory provision of local application the Council may from time to time for the purposes of or in connection with the carrying on of the undertaking set apart and appropriate any part of the harbours for the time being vested in, or occupied or administered by the Council as part of the undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall make any use of any part of the harbours so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council and—

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

Other commercial activities

57.—(1) The Council may, in addition to any other powers conferred on the Council—

- (a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person;
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a company, for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind,

provided that it is conducive to the improvement, maintenance, operation or management of the harbours in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a company referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

(3) The powers of the Council under this article are additional to the powers of the Council under section 37 of the Docks and Harbours Act 1966⁽¹⁾ (powers of harbour authorities to acquire a harbour business or shares in a harbour business).

Power to delegate functions

58. Subject to paragraph 9B of Schedule 2 to the Act of 1964 (functions which cannot be delegated under a power conferred by a harbour revision order), the Council may delegate the performance of any of its functions to be carried out by any such company as is referred to in article 57(1)(b).

Bunkering

59.—(1) The Council may from time to time grant to a person with or without conditions a licence to carry out commercial refuelling activities related to vessels in the harbours.

(2) Nothing in any licence granted under paragraph (1) shall entitle a person to carry out commercial refuelling activities from or on land not owned or leased by that person or by the Council or in which that person has no interest.

(3) Any licence granted under paragraph (1) shall be valid only for a period of one year commencing with the date on which it is granted.

(4) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(5) Any person who without reasonable excuse carries out or permits a commercial refuelling activity related to a vessel in the harbours except in accordance with a licence issued by the Council under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Power with respect to disposal of wrecks

60.—(1) In its application to the Council, section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) has effect in relation to the harbours and its approaches in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3), and to any enactment for the time being in force limiting a person's liability, the Council may recover from the owner of any vessel sunk, stranded or abandoned on or after the date of coming into force of this Order in relation to which it has exercised its powers under section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Council an emergency, paragraph (2) shall 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 Act of 1995 (powers of harbour and conservancy authorities in

(1) 1966 c. 28; section 37(3) was repealed by the Transport and Works Act 1992 (c. 42), Schedule 4 (Part II).

relation to wrecks) other than the power of lighting and buoying, the Council 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 Council receive from the owner counter-notice in writing that the owner desires to dispose of the vessel themselves, the owner shall be at liberty to do so; and the Council must not exercise the powers in section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to the owner by the Council.

(5) Notice under paragraph (3) to the owner of any vessel may be served by the Council either by delivering it to the owner or by sending it to the owner by registered post or the recorded delivery service addressed to the owner at their last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Council, or is not in the United Kingdom, by displaying the notice at the relevant harbour office of the Council and electronically on the Council's harbours website for the period of its duration.

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

(7) The powers conferred on the Council by this article shall be 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 harbours and their approaches.

Power to deal with unserviceable vessels

61.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 (unserviceable vessels to be altogether removed from the harbour) and on the Council by section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) the Council may sell, break up or otherwise dispose of any vessel which is unserviceable and has been laid by or neglected in the harbours or on land immediately adjoining the harbours.

(2) The Council may retain out of the proceeds of sale of such vessel, any expenses reasonably incurred by it in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel, or warning other persons or vessels of its presence and any expenses reasonably incurred by the harbour master under section 57 of the Act of 1847 (unserviceable vessels to be altogether removed from the harbour) and must pay the surplus, if any, to the person entitled to that surplus.

(3) If the proceeds of the sale are insufficient to reimburse the Council for the said expenses, or there is no sale, the Council may recover the deficiency, or where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(4) Except in the case of emergency, the Council must, before exercising its powers under this article, give 14 days' notice in writing of its intention to do so to the registered owner of the vessel and by advertisement in each of two successive weeks in a local newspaper circulating in the area of the relevant harbour, provided that, if the registered owner or their place of business or address is not known to the Council or is outside of the United Kingdom, the notice may be given by displaying it at the relevant harbour office of the Council and electronically on the Council's harbours website for two successive weeks.

Removal of obstructions other than vessels

62.—(1) The Council may remove anything, other than a vessel, causing or likely to become an obstruction to, or cause interference with, navigation in any part of the harbours or any approach to the harbours.

(2) The Council may take such steps as appear to it to be appropriate to prevent or minimise such obstruction or interference for the purposes of paragraph (1).

(3) If anything removed by the Council under paragraph (1) is so marked as to be readily identifiable as the property of any person, the Council must, within 28 days of its coming into the Council's custody, give written notice to that person stating that—

(a) upon proof of ownership to the reasonable satisfaction of the Council; and

(b) upon payment of any reasonable expenses incurred by the Council under this article, possession may be re-taken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served).

(4) If for the purposes of this article possession of anything removed is not so re-taken it shall at the end of that period vest in the Council.

(5) Notwithstanding the provisions of paragraph (3) the Council may, at such time and in such manner as it thinks fit, dispose of anything removed under paragraph (1)—

(a) which is not so marked as to be readily identifiable as the property of any person; or

(b) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(6) If anything disposed of by the Council under this article is sold, the Council must place a notice at the relevant harbour office and on the Council's harbours website for a period of 28 days giving details of the property sold and may retain out of the proceeds of sale any expenses incurred by it under this article, and any surplus from the proceeds—

(a) must be paid to any person who within 24 months from the time when the property came into the custody of the Council proves to the reasonable satisfaction of the Council that they were the owner at that time; or

(b) if within the said period no person proves their ownership at the said time, shall vest in the Council.

(7) If the proceeds of sale of anything removed under this article are insufficient to reimburse the Council for the expenses set out in paragraph (6), or there is no sale because the property is unsaleable, the Council may—

(a) recover the deficiency; or

(b) where there is no sale, the whole of the expenses,

from the person who was the owner at the time when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

Boarding of vessels or vehicles

63. A duly authorised officer of the Council may, on producing their authority if so required, enter and inspect a vessel or vehicle in the harbours for the purposes of any enactment relating to the harbours (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the harbours, including the enforcement of any such enactment, byelaw or general direction.

Notices

64.—(1) Except where this Order expressly provides otherwise a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, must be in writing and must be served by first class post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) Where a person on whom a notice or other document is to be served has agreed in writing that service may be by email, or other electronic means, the Council may provide notices by that means until such time as the person informs them in writing that they are no longer willing to receive notices or documents by email or by such other electronic means.

(4) For the purposes of section 7 of the Interpretation Act 1978⁽²⁾ (references to service by post) as it applies for the purposes of this article, the proper address of a person in relation to the service on them of a notice or document under paragraph (1) is, if they have given an address for service that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body;
- (b) in any other case, their last known address at the time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) in the case of a notice or document to be served on a person as having an interest in or as the occupier of, any land, it may be served by—
 - (i) addressing it to them by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land,
- (b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited) or by handing it to a member of the crew; and
- (c) in the case of any other notice or document or a notice or document that is not capable of being served in accordance with sub-paragraph (b) it may be served by displaying it at the relevant harbour office for the period of its duration.

Saving for Trinity House

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

Crown Rights

66.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown;
- (b) authorise the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any part of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to—

(2) 1978 c. 30.

- (i) His Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of the Crown Estate Commissioners,
- (ii) the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the prior consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, the consent in writing of two or more of such of the regular officers of the said Duchy or other such persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863⁽³⁾ (proviso for exercise of powers when the Duchy of Cornwall is vested in the Crown),
- (iii) a government department or held in trust for His Majesty for the purposes of a government department, without the consent in writing of that government department.

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

Amendment of Act and Orders

67.—(1) The St Ives (Pilotage) Harbour Revision Order 1988⁽⁴⁾ is amended as follows.

(2) In article 2 (definitions) in the definition of “harbour” omit “as described in section 33 of the St Ives Harbour Act 1853” and substitute “the limits of which are described in Schedule 1 to the Cornwall Harbours Harbour Revision Order 2023”.

(3) The Penzance and Newlyn (Pilotage) Harbour Revision Order 1988⁽⁵⁾ is amended as follows.

(4) In article 2 (interpretation) in the definition of “the Harbours” omit “as described in section 15 of the Penzance Corporation Act 1883” and substitute “the limits of which are described in Schedule 1 to the Cornwall Harbours Harbour Revision Order 2023”.

(5) The Stratton and Bude Improvement Act 1901⁽⁶⁾ is amended as follows.

(6) In section 16 (maintenance of undertaking of company after transfer) omit “harbour docks”.

(7) In section 110 (as to deficiency in receipts) omit “or harbour undertakings” and substitute “undertaking”.

(8) In section 111 (separate accounts to be kept as to water and harbour) omit “and harbour undertakings” and substitute “undertaking”.

(9) In section 114 (general provisions as to byelaws)—

(a) omit “the Board of Trade shall be the confirming authority for byelaws made under the section of this Act the marginal note whereof is “Byelaws as to harbour” and”;

(b) omit “harbour or the”.

Revocation / Repeal

68. On the date this Order comes into force the enactments mentioned in the first and second columns of Schedule 4 (revocation / repeal) shall be revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

⁽³⁾ 1863 c. 49.

⁽⁴⁾ S.I. 1988/1500.

⁽⁵⁾ S.I. 1988/1495.

⁽⁶⁾ 1 Edw. 7. Ch. cclviii.