
WELSH STATUTORY INSTRUMENTS

2011 No. 1565

The Saundersfoot Harbour Empowerment Order 2011

PART 1

PRELIMINARY

Title and commencement

- 1.—(1) The title of this Order is the Saundersfoot Harbour Empowerment Order 2011.
(2) Subject to paragraph (3), this Order comes into force on 1 July 2011.
(3) The following provisions of this Order come into force on the new constitution date—
article 4(1);
article 5(1);
article 7(1)(b);
article 58; and
article 64.

Interpretation

2. In this Order unless the context otherwise requires—
“the 1847 Act” (“*Deddf 1847*”) means the Harbours, Docks and Piers Clauses Act 1847(1);
“the 1964 Act” (“*Deddf 1964*”) means the Harbours Act 1964(2);
“the 1965 Act” (“*Deddf 1965*”) means the Compulsory Purchase Act 1965(3);
“the 1958 Order” (“*Gorchymyn 1958*”) means the Saundersfoot Harbour Order 1958(4);
“the advisory committee” (“*y pwyllgor cyngtori*”) means the committee appointed under article 58(1);
“appointing body” (“*corff sy'n penodi*”) means any of the persons (namely the local authorities and the appointments panel) by whom Commissioners are appointed in accordance with article 5;
“the appointments panel” (“*y panel penodiadau*”) means the panel constituted under article 7;
“the approaches” (“*y dynesfeydd*”) means any seaward approaches to the harbour;
“the car park” (“*y maes parcio*”) means the area edged in broken green lines on the harbour map;
“the Commissioners” (“*y Comisiynwyr*”) means the Saundersfoot Harbour Commissioners constituted by this Order, and “Commissioner” (“*Comisiynydd*”) means one of them;

(1) 1847 c. 27.
(2) 1964, c. 40.
(3) 1965 c. 56.
(4) S.I. 1958 No. 886.

“the former Commissioners” (“*y Comisiynwyr blaenorol*”) means the Saundersfoot Harbour Commissioners who were constituted by the 1958 Order;

“the harbour” (“*yr harbwr*”) means the harbour of Saundersfoot as defined by article 22 and the land, buildings, works, plant, property and conveniences connected with it, or any part of it or them;

“harbour map” (“*map o'r harbwr*”) means the map set out at Schedule 5, dated 3 April 1958 and titled “Map of the Limits of Saundersfoot Harbour” (“*Map o Derfynau Harbwr Saundersfoot*”);

“the harbour master” (“*yr harbwrfeistr*”) includes the harbour master’s authorised deputies and assistants and any person authorised by the Commissioners to act in that capacity;

“the harbour revenues” (“*refeniwiau'r harbwr*”) means the rates, tolls, dues, rents and other monies and receipts which may be taken and received by way of income from or in respect of the undertaking under and by virtue of this Order;

“the index” (“*y mynegai*”) means—

- (a) the general index of retail prices (for all items) published by the Statistics Board, or
- (b) if that index is not published for a relevant month, any substituted index or index figures published by that Board;

“level of high water” (“*lefel penllanw*”) means the level of mean high-water spring tides;

“the local authorities” (“*yr awdurdodau lleol*”) means Pembrokeshire County Council and Saundersfoot Community Council;

“moorings” (“*angorfeydd*”) includes floating jetties, pontoons, buoys and like apparatus or facilities;

“new constitution date” (“*dyddiad y cyfansoddiad newydd*”) means the first day of the month beginning immediately following 3 months after the making of this Order;

“personal watercraft” (“*dyfrfad personol*”) 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 by—

- (a) means of a handlebar operated linked system (with or without a rudder at the stern);
- (b) the person or persons riding the craft using his or her body weight for the purpose; or
- (c) a combination of the methods referred to in (a) and (b);

“seaplane” (“*awyren fôr*”) includes a flying boat and any other aircraft designed to manoeuvre on the water;

“statutory undertaker” (“*ymgymerydd statudol*”) means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990⁽⁵⁾;
- (b) any other person who exercises functions under the Land Drainage Act 1991⁽⁶⁾;
- (c) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949⁽⁷⁾;

“tidal work” (“*gwaith llanwol*”) means so much of any work as is on, under or over tidal waters or land below the level of high water;

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

(5) 1990 c. 8.
(6) 1991 c. 59.
(7) 1949 c. 74.

“the undertaking” (“*yr ymgymeriad*”) means the undertaking of the Commissioners in connection with the harbour and includes the estates, rights and property conferred on or vested in the former Commissioners pursuant to the 1958 Order;

“the Welsh Ministers” (“*Gweinidogion Cymru*”) carries the same meaning as in the Government of Wales Act 2006⁽⁸⁾;

“vessel” (“*llong*”) includes—

- (a) non-displacement craft;
- (b) personal watercraft;
- (c) seaplanes; and
- (d) any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and hovercraft or any other amphibious vehicle, used or capable of being used as a means of transportation on water; and

“the works” (“*y gweithiau*”) means the works that were vested in the former Commissioners under the 1958 Order.

Incorporation of Clauses Acts

3.—(1) The enactments referred to in paragraph (2) are, so far as applicable and not inconsistent with this Order, incorporated with this Order.

(2) The enactments are—

- (a) sections 60, 62 to 65, and 75 to 83 of the Commissioners Clauses Act 1847⁽⁹⁾; and
- (b) sections 2, 3, 4, 23, 27, 29, 31 to 46, 52, 53, 55 to 59, 61 to 66, 69 to 71, 73 to 78 and 83 of the 1847 Act.

(3) The enactments referred to in paragraph (2)(b) have effect as follows—

- (a) “the harbour, dock or pier” means the harbour;
- (b) “the special Act” means this Order;
- (c) “the Promoters of the undertaking” and “the undertakers” mean the Commissioners;
- (d) the maximum penalty for any summary offence under any of those sections is level 4 on the standard scale;
- (e) “vessel” has the meaning given by article 2;
- (f) in section 23, the words “provided that no such lease be granted for a longer term than three years” are omitted; and
- (g) nothing in section 53 requires the harbour master to serve on the master of a vessel notice in writing of a direction but such directions may be given orally, or in any other reasonable manner.

⁽⁸⁾ 2006 c. 32.

⁽⁹⁾ 1847 c. 16.

PART 2

THE COMMISSIONERS

The Commissioners

4.—(1) Subject to article 9 there is to be a body of eight Commissioners, to be known as the Saundersfoot Harbour Commissioners, appointed in accordance with Part 2 of this Order and with power to exercise the functions conferred on the Commissioners by or under this Order.

(2) Subject to the provisions of this Order, the Commissioners must carry on the undertaking as if in all respects the Commissioners were the same person as the former Commissioners.

Constitution of Commissioners

5.—(1) On and after the new constitution date, the Commissioners are to consist of—

- (a) one member appointed by each of—
 - (i) Pembrokeshire County Council; and
 - (ii) Saundersfoot Community Council; and
- (b) six members appointed by the appointments panel.

(2) Each Commissioner appointed under paragraph (1) is to be a person who appears to the appointing body to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions including special knowledge, experience or ability in one or more of the following matters—

- (a) management of harbours;
- (b) shipping or other forms of transport;
- (c) sea fishing;
- (d) appropriate commercial or industrial experience;
- (e) financial management;
- (f) administration and organisation of workers;
- (g) sport and recreational use of the harbour;
- (h) environmental matters affecting harbours;
- (i) specific knowledge of or interest in the local community and wider community in the economic and social context within which the Commissioners operate;
- (j) tourism and leisure; and
- (k) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions;

and the appointments panel must endeavour to ensure so far as reasonably practicable, that the Commissioners appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of their functions.

Selection of Commissioners

6.—(1) Each appointing body must make the appointments provided for by article 5 of this Order on merit, in accordance with a published recruitment policy and having had regard to equal opportunities.

(2) In making an appointment under article 5(1) each appointing body must act in accordance with any guidance issued by the Welsh Ministers from time to time with respect to the exercise of such functions.

Appointments panel

7.—(1) There is to be an appointments panel, consisting of—

- (a) the chair or vice-chair of the Commissioners;
- (b) one person nominated by the advisory committee;
- (c) one person nominated by Pembrokeshire County Council; and
- (d) one person nominated by Saundersfoot Community Council.

(2) The appointments panel must consult the Commissioners before making any appointment, and must give the clerk notice in writing of every appointment that it makes.

(3) Each member of the appointments panel must act independently, and not as the delegate of the body which nominated that member.

(4) The acts and proceedings of the appointments panel will not be invalidated by any single vacancy in their number.

Appointment of Commissioners and terms of office

8.—(1) The first appointments under article 5(1) must be made as soon as reasonably practicable after this Order comes into force and, in any event, before the new constitution date.

(2) Of the Commissioners so appointed—

- (a) four, one of whom must be appointed to chair the Commissioners, will hold office for a period of three years commencing on the new constitution date;
- (b) four will hold office for a period of four years commencing on the new constitution date.

(3) At the expiry of their term of office the appointments panel may extend the term of office of one or more (but not more than four) of the Commissioners they appointed under article 5(1)(b) by up to a maximum of a year.

Transitional provisions

9.—(1) On the day this Order comes into force, each of—

- (a) the Welsh Ministers;
- (b) Pembrokeshire County Council; and
- (c) Saundersfoot Community Council;

must appoint an initial interim Commissioner to carry on the undertaking and exercise the functions conferred on the Commissioners by this Order during the period between the date on which this Order comes into force and the new constitution date.

(2) Each initial interim Commissioner appointed under article 9(1) will hold office and, in the case of the chair and vice-chair, in that capacity until the new constitution date as if appointed under article 5 of this Order unless, prior to the new constitution date, that initial interim Commissioner dies, resigns or becomes disqualified from office.

(3) Subject to paragraph (4), article 15 and Schedule 2 do not apply to the initial interim Commissioners.

(4) In exercising their functions, the initial interim Commissioners must comply with any direction given by the Welsh Ministers about any provision of this Order (with such modifications

(if any) as may be specified by the Welsh Ministers in the direction) that is deemed to apply to the initial interim Commissioners.

(5) On the new constitution date—

- (a) all contracts, deeds, bonds, agreements and other instruments subsisting in favour of, or against, and all notices in force which were given (or having effect as if they had been given) by, or to, the initial interim Commissioners will be of full force and effect in favour of, or against, the Commissioners; and
- (b) any action or proceeding or any cause of action or proceeding, pending or existing at the new constitution date by, or against, the initial interim Commissioners will not be prejudicially affected by reason of this Order, and may be continued, prosecuted and enforced by, or against, the Commissioners.

Terms of office of subsequent Commissioners

10.—(1) Subject to the following provisions of this article, a Commissioner appointed under article 5(1) holds office for a period of three years from the date of appointment.

(2) Paragraph (1) does not apply to Commissioners appointed in accordance with article 8(1) or under article 11.

(3) Paragraph (1) is subject to articles 12 and 13 and paragraph 10 of Schedule 2.

Casual vacancies

11.—(1) If a casual vacancy occurs in the office of a Commissioner, the appointments panel must appoint another person to fill the vacancy, unless it is not reasonably practicable to do so, and must comply with articles 5(2) and 6 in doing so, as if the references in those articles to article 5(1) and article 5 were references to this article.

(2) Subject to articles 12 and 13 and paragraph 10 of Schedule 2, a Commissioner appointed to fill a casual vacancy under this article holds office during the remainder of the term of the Commissioner whose office was vacated (including any extension of that term).

Declaration to be made by Commissioners

12.—(1) No person may act as a Commissioner under article 4 until that person has made the declaration set out in Schedule 1 to this Order (or a declaration to that effect).

(2) A person who fails to make that declaration within three months of being appointed ceases to be a Commissioner.

Disqualification of Commissioners

13.—(1) If the Commissioners are satisfied that a Commissioner—

- (a) has been absent from meetings of the Commissioners for a period of three consecutive months without the permission of the Commissioners; or
- (b) has become bankrupt or has made an arrangement with creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of Commissioner; or
- (d) is otherwise unable, unwilling or unfit to discharge the functions of a Commissioner;

the Commissioners may declare that person's office as a Commissioner to be vacant, upon which the office will be vacant.

(2) For the purposes of paragraph (1)(a) the attendance of a Commissioner at a meeting of any committee of the Commissioners of which that Commissioner is a member may be treated as attendance at a meeting of the Commissioners.

Indemnity insurance for Commissioners

14. The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnify the Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or any of them; not being an act or omission which the Commissioner or Commissioners in question knew to be a breach of his her or their duty or concerning which he she or they were reckless as to whether it was such a breach.

Provisions applying to Commissioners

15. Subject to article 9 in relation to the initial interim Commissioners, the provisions set out in Schedule 2 to this Order have effect with respect to the Commissioners.

PART 3

ACQUISITION OF LAND

Power to acquire land

16. The Commissioners may acquire compulsorily so much of the land or interests in land comprised in the works and car park as is described in Schedule 3 and shown in the map in Schedule 4 to this Order and was vested in the former Commissioners under the 1958 Order, and may use any land so acquired for the purposes of carrying on the undertaking or for any other connected purposes.

Application of Part 1 of the Compulsory Purchase Act 1965

17.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(10) applies, and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

18.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(11) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1) has effect with the following modifications.

- (3) In section 3 (preliminary notices), for subsection (1) substitute—

(10) 1981 c. 67.

(11) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(8) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 17 (application of Part 1 of the Compulsory Purchase Act 1965).

Disregard of certain interests and improvements

19.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land, or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” (“*tirperthnasol*”) means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Extinction of private rights of way

20.—(1) All private rights of way over, and any other third party rights in land subject to compulsory acquisition under this Order, are extinguished from the sooner of—

- (a) the acquisition of the land by the Commissioners, whether compulsorily or by agreement, or
- (b) the entry on the land by the Commissioners under section 11(1) of the 1965 Act.

(2) Any person who suffers loss by the extinguishment of any private right of way or other legal interest in the land under this article is entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(3) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990(12) (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

21. After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied by article 17; and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 18.

PART 4

MANAGEMENT AND REGULATION OF HARBOUR

Harbour limits

22.—(1) The Commissioners have and may exercise the functions conferred on them by this Order and the powers of a harbour authority and local lighthouse authority within the area comprised in—

- (a) the works;
- (b) the car park; and
- (c) the area below the level of high water bounded by an imaginary line drawn from the eastern extremity of Coppet Hall Point in the community of Saundersfoot southwards to the eastern extremity of Monkstone Point in the community of St Mary out Liberty.

(2) Schedule 5 contains the harbour map setting out the area referred to in paragraph (1) edged in green.

(3) The Commissioners may demand dues and other charges under article 33 and the 1964 Act within the area comprised in—

- (a) the works;
- (b) the car park; and
- (c) so much of the foreshore and the bed of the sea as is enclosed by the works and a line drawn from the seaward extremity of the mole which runs in an approximately north-easterly direction to the seaward side of the mole running approximately east-south-east, which is marked in a broken red line on the harbour map.

General powers

23.—(1) Subject to the other provisions of this Order, the Commissioners may take such steps from time to time as they consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and the accommodation and facilities (including navigation facilities) available in or in connection with the harbour.

(12) 1990 c. 8.

- (2) In particular, the Commissioners may—
- (a) improve, maintain, regulate, manage, mark and light the harbour and any works in it;
 - (b) improve, alter and maintain any bunds, embankments, walls, roads (except public highways), footways, approaches, steps, landing places, piers, quays, jetties, slips, wharves, groynes, sea defences, berthing heads, mooring posts, mooring buoys, moorings, stagings, piles, booms, dolphins, bollards, mooring rings, fenders, walkways, buoys, navigation marks, cranes, lights, beacons, sewers, drains, watercourses, gas and water pipes, apparatus for electric light and power and for telecommunications, warehouses, offices, sheds and other works, buildings and facilities which they consider necessary to secure the purposes of this Order, including the accommodation or convenience of vessels, vehicles or other traffic or for the protection of the harbour;
 - (c) do any other thing (including the provision of facilities or the carrying on of any business) which, in their opinion, is in the interests of the proper carrying on or development of the harbour or can advantageously be undertaken by them by virtue of their activities in relation to the harbour; and
 - (d) make such other use as the Commissioners consider appropriate of any resources so far as they are not required for the purposes of the undertaking.
- (3) Subject to the provisions of this Order, the Commissioners may by agreement purchase and hold for the purposes of this Order any land in addition to that vested in the Commissioners under this Order.

Power to dredge

24.—(1) Subject to the provisions of this Order, the Commissioners may from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the harbour and its approaches, and may blast any rock in that area.

(2) Subject to the provisions of this Order, any material (other than any wreck within the meaning of Part 9 of the Merchant Shipping Act 1995(13)) from time to time dredged up or removed is the property of the Commissioners who may use, appropriate or dispose of it as they think fit.

(3) Subject to the provisions of this Order, no dredged materials are to 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 Welsh Ministers.

Moorings

25.—(1) The Commissioners may provide, place, lay down, maintain, renew, use, have or remove such moorings within the harbour—

- (a) on land owned or leased by them or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee, on any other land in the harbour;

as they consider necessary or desirable for the convenience of vessels.

(2) The Commissioners may issue permits on such conditions (including conditions as to payment) as they think fit authorising the holder of the permit to use or allow the use of any moorings provided by the Commissioners under this article.

(3) The Commissioners may compound with any person with respect to the payments referred to in paragraph (2).

- (a) (4) (a) The Commissioners may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into

force requiring that person within 28 days to remove the mooring so as to enable the Commissioners to provide moorings in accordance with paragraph (1).

- (b) The Commissioners must offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by them under paragraph (1) as soon as such mooring has been laid down.
- (c) If any person fails to comply with a notice given by the Commissioners under this paragraph, the Commissioners 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.
- (a) (5) (a) The Commissioners may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, renew, use and have existing and future moorings, for vessels in the harbour.
- (b) Nothing in any such licence entitles a person to place, lay down, maintain, renew or use and have any mooring on land not owned or leased by that person or by the Commissioners or in which that person has no appropriate interest.
- (c) The Commissioners may charge for such a licence such reasonable fee as the Commissioners may from time to time prescribe.

Obstruction of moorings

26.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Commissioners in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes the whole or any part of any moorings from the harbour;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Commissioners under this Order; or
- (d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Commissioners under this Order;

is 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 paragraph (1)(c) the Commissioners may at any time after the expiration of seven days from the date of the offence—

- (a) remove the vessel, including any tackle with the vessel;
- (b) dispose of it; and
- (c) recover out of the proceeds of sale—
 - (i) any unpaid charge payable under article 33;
 - (ii) any unpaid licence fee payable under article 25; and
 - (iii) the expenses of removal and disposal under this paragraph;

and will hold any surplus proceeds of sale on trust for the owner of the vessel.

(3) If the owner of a vessel removed under paragraph (2) is unknown and cannot after diligent inquiry be found, the Commissioners may apply to the Magistrates' Court for an order giving the appropriate directions as to the disposal by the Commissioners of any surplus proceeds of sale.

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

Removal of obstructions other than vessels, vehicles and wreck

27.—(1) Without prejudice to their powers under any other enactment (including one contained in this Order) the Commissioners may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour other than—

- (a) a vessel;
- (b) a vehicle; or
- (c) wreck within the meaning of Part 9 of the Merchant Shipping Act 1995⁽¹⁴⁾.

(2) If anything removed by the Commissioners under paragraph (1) is known to the Commissioners to be, or is marked so as to be readily identifiable as, the property of any person, the Commissioners must, within one month of its coming into their custody, give notice in accordance with paragraph (6) to that person and, if possession of the thing is not retaken within the period specified in and in accordance with the terms of the notice, it will at the end of that period vest in the Commissioners.

(3) If the ownership of anything removed by the Commissioners under paragraph (1) which is not known or marked is not within three months of its coming into the custody of the Commissioners proved to their reasonable satisfaction, it will vest in the Commissioners.

(4) The Commissioners may, at such time and in such manner as they think fit, dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Commissioners under this article, and if it is sold the proceeds of sale will be applied by the Commissioners in payment of the expenses incurred by them under this article in relation to the thing, and any balance—

- (a) must be paid to any person who within three months from the time when the thing came into the custody of the Commissioners proves to the reasonable satisfaction of the Commissioners ownership of that thing at that time; or
 - (b) if within the relevant period no person proves ownership, it will vest in the Commissioners.
- (5) If anything removed under this article—
- (a) is sold by the Commissioners and the proceeds of sale are insufficient to reimburse them for the amount of the expenses incurred in the exercise of their powers of removal; or
 - (b) is unsaleable;

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

(6) A notice given under paragraph (2) must specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Commissioners possession may be taken at a place and time specified in the notice, being not less than 14 days after the date when the notice is served.

(7) The Commissioners must not under the powers of this article remove anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by the Commissioners.

Power to appropriate parts of harbour

28.—(1) The Commissioners may set apart and appropriate any part of the on-shore facilities of the harbour for the exclusive or preferential use and accommodation of any particular trade, activity, person, vessel or class of vessels, or goods, subject to such terms, conditions and regulations as the Commissioners think fit.

(14) 1995 c. 21.

(2) No person or vessel may make use of any part of the harbour set apart or appropriated under this article without the consent of the harbour master.

(3) The harbour master may order any person or vessel without consent under paragraph (2) to leave or be removed from any part of the harbour set apart or appropriated under this article.

(4) The provisions of section 58 (powers of harbour master as to moving of vessels in harbour) of the 1847 Act extend and apply with the necessary modifications to and in relation to any vessels ordered to leave or be removed under paragraph (3).

(5) Nothing in this article authorises the prohibition of navigation within any part of the harbour, nor does it authorise interference with the public right of way across public slipways and public quays.

Life-saving craft and appliances

29.—(1) For the purpose of saving life the Commissioners may provide and maintain in or in the vicinity of the harbour—

- (a) boats or other vessels together with all necessary apparatus and equipment and buildings, structures, slipways and moorings for their operation, maintenance or accommodation; and
- (b) lifebuoys, lifelines and other life-saving appliances together with structures for their storage and safekeeping.

(2) The Commissioners may enter into arrangements with any person for the provision and maintenance of any of the facilities authorised by paragraph (1).

Byelaws as to harbour

30.—(1) In addition to the byelaws which may be made by the Commissioners under section 83 of the 1847 Act, the Commissioners may make byelaws for the good rule and government of the harbour including all or any of the following purposes—

- (a) for regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities provided by the Commissioners;
- (b) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons in the harbour;
- (c) for regulating, preventing or licensing the conduct of all persons in vessels or otherwise in the harbour, not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties as such;
- (d) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specification of moorings;
- (e) for preventing or removing obstructions or impediments within the harbour;
- (f) for regulating the launching of vessels within the harbour;
- (g) for regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbour;
- (h) for regulating or preventing the use in the harbour or on board any vessel of fires, lights or any other equipment, tools or appliances which the Commissioners consider involves a risk of fire and for the prevention of smoking;
- (i) for regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse) and sewage from vessels in the harbour;
- (j) for the prevention of the disposal of such rubbish and sewage in the harbour;

- (k) for prohibiting the use of or regulating the movement, speed and parking of vehicles within the harbour;
 - (l) for requiring the use of effectual silencers and the general control of noise on vessels in the harbour;
 - (m) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
 - (n) for regulating the embarkation of persons into, or their disembarkation from, vessels within the harbour;
 - (o) for regulating the holding of regattas and other public events in the harbour;
 - (p) for prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground within the harbour;
 - (ii) by devices used for marking obstructions within the harbour;
 - (iii) for assisting the navigation of vessels within the harbour, at the entrance to any dock or at any wharf, pier or other work;
 - (q) for the prevention of nuisances in the harbour;
 - (r) for prohibiting or regulating the discharge by land or sea of any material or thing within the harbour or the approaches thereto;
 - (s) for regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, or other installation or structure of any kind within the harbour;
 - (t) for regulating or prohibiting aquaplaning, jet skiing, water skiing or diving or other recreational activities in the harbour, but not as to prohibit the use for navigation of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
 - (u) for regulating or prohibiting bathing, and for securing the protection of bathers, within the harbour;
 - (v) for regulating or prohibiting the use by vehicles of the foreshore within the harbour;
 - (w) for regulating the use of ferries within the harbour; and
 - (x) for regulating the exercise of the powers vested in the harbour master.
- (2) In this article “signals” (“*signalau*”) includes sound signals.
- (3) Byelaws made under this article or under section 83 of the 1847 Act may be expressed to be applicable within all or any part of the harbour and different byelaws may be made in relation to different classes of vessels.
- (4) The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972(15) apply to all byelaws made by the Commissioners under this article or any other enactment.
- (5) In its application to byelaws made by the Commissioners under this article subsection (7) of the said section 236 is, subject to paragraph (6), to be construed as if it had been amended by the insertion of the words “with or without modifications” after the word “confirm” in the first place where that word occurs.
- (6) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

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

(7) The confirming authority for the purposes of this article and of the said section 236 in its application to byelaws made by the Commissioners is the Welsh Ministers.

(8) Byelaws made by the Commissioners under this article may contain provisions imposing upon a person offending against any byelaw a fine on summary conviction not exceeding level 3 on the standard scale.

(9) The byelaws made by the former Commissioners on 13 April 1971, as confirmed by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales on 28 April 1971, and as purported to be modified by the National Assembly for Wales on 3 November 2003, are deemed to be byelaws made by the Commissioners under this article and subsequently confirmed by the Welsh Ministers.

(10) For the avoidance of doubt, byelaws made by the Commissioners under paragraph (1) may amend or revoke, either wholly or partially, the byelaws deemed to have been made and confirmed by virtue of paragraph (9).

Removal of vehicles

31.—(1) If a vehicle is left without permission of the Commissioners—

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour;
- (b) in any part of the car park or harbour premises where the parking of vehicles is prohibited by a sign displayed by the Commissioners; or
- (c) in a parking place provided by the Commissioners within the car park or harbour premises, for a longer period than 24 hours or such other period as may be specified in a sign displayed by the Commissioners;

the Commissioners may, at the risk of the owner, remove the vehicle or cause it to be removed.

(2) Any sign erected under paragraph (1)(b) or (c) must be conspicuously displayed at or close to the place to which it relates.

(3) Where the Commissioners in exercise of the powers of this article remove a vehicle or cause it to be removed the Commissioners must as soon as practicable inform the police.

(4) The expenses of and incidental to the removal and retention of a vehicle under this article are recoverable from any person responsible.

(5) For the purposes of paragraph (4) “person responsible” (“*person sy'n gyfrifol*”) means—

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under paragraph (1), unless the owner shows that he or she was not concerned in, and did not know of, its being put there;
- (b) any person by whom the vehicle was put in that place; or
- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978⁽¹⁶⁾ in consequence of the putting of the vehicle in that place.

(6) If the Commissioners in exercise of the powers of this article remove a vehicle to a place not readily visible from the place from which it was removed they must, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle at the

(16) 1978 c. 3.

owner's last known address, registered address or the address where the vehicle is ordinarily kept, notice that the Commissioners have exercised the powers of this article and of the place to which the vehicle has been removed.

(7) A sign stating the general effect of paragraph (1) must be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour premises.

Immobilisation of vehicles illegally parked

32.—(1) If a vehicle is left on the harbour premises in contravention of article 31 an authorised officer of the Commissioners may—

- (a) fix an immobilisation device to the vehicle while it remains in the place in which the authorised officer found it; or
- (b) move it from that place to another place on the harbour premises and fix an immobilisation device to it in that other place.

(2) The person fixing the device must also affix to the vehicle a notice—

- (a) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device;
- (b) specifying the steps to be taken in order to secure its release; and
- (c) giving such other information as may be prescribed by the Commissioners.

(3) A vehicle to which an immobilisation device has been fixed in accordance with this article may only be released from that device by or under the direction of a person authorised by the Commissioners to give such a direction.

(4) Subject to paragraph (3), a vehicle to which an immobilisation device has been fixed in accordance with this article must be released from that device on payment in any manner specified in the notice affixed under paragraph (2), of such charge in respect of the release as the Commissioners may prescribe.

(5) Any person who, without being authorised to do so in accordance with paragraph (3), removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Where a vehicle is moved in accordance with this article before an immobilisation device is fixed to it, any power of removal under article 31 which was exercisable in respect of that vehicle immediately before it was moved continues to be exercisable while the vehicle remains in the place to which it was moved.

(7) In this article “immobilisation device” (“*dyfais atal symud*”) means any device or appliance which is approved as an immobilisation device for the purposes of section 104 of the Road Traffic Regulation Act 1984⁽¹⁷⁾.

(8) A sign stating the general effect of paragraph (1) must be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour premises.

(17) 1984 c. 27.

PART 5

CHARGES

Charges for services or facilities

33. In addition to their power to demand ship, passenger and goods dues under section 26 of the 1964 Act, the Commissioners may demand, take and recover such reasonable charges for services and facilities provided by them within the harbour as they may from time to time determine.

Payment of charges

34.—(1) The charges which the Commissioners are for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment are payable before the removal from the harbour 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 Commissioners may from time to time specify in their published list of charges.

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

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

(4) Without prejudice to paragraph (1), the terms and conditions as to the payment of charges which the Commissioners may from time to time specify may include the time when a charge falls due for payment and may require such information to be given to the Commissioners by the owner or master of a vessel or a person using a service or facility of the Commissioners as the Commissioners may require in connection with the assessment or collection of a charge.

Compounding arrangements and rebates

35. Nothing in section 30 of the 1964 Act requires the Commissioners 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 the list.

Deposit for charges

36.—(1) The Commissioners may require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Commissioners, 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 Commissioners may detain in the harbour 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

37.—(1) A person who by agreement with the Commissioners collects charges on their 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 in respect of it.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Commissioners give security for charges on goods in the wharfinger or carrier's custody, and in that event the wharfinger or carrier has a like lien on the goods for the amount of those charges

as the wharfinger or carrier would have in respect of charges for safe custody or carriage of the goods, as the case may be.

Master of fishing vessel to report take of fish

38.—(1) The master or owner of any vessel (not being a pleasure boat) with a take or cargo of fish must on the arrival of the vessel within the limits of the harbour provide to the collector of rates a true and accurate statement of his or her take or cargo of fish and the name of every person obtaining delivery of the take or cargo.

(2) A master or owner of a vessel who fails to comply with this article commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Harbour master may prevent sailing of vessels

39. The harbour master may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to the harbour master of the payment of any charges payable in respect of the vessel or of its passengers or of any goods imported or exported (and in the case of a vessel with a take or cargo of fish until the master or owner of the vessel has given in the statement of his or her take or cargo of fish required by article 38).

Exemptions from dues

40. Except as may be agreed between the Commissioners and the lifeboat service concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Commissioners to levy dues authorises them to levy dues on a vessel belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service.

PART 6

CONTROL OF WORKS AND DREDGING

Restriction of works and dredging

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

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

unless that person is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article 43 of this Order or, as the case may require, article 44 of this Order.

(2) The Commissioners may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site to its former condition; and if that person fails to comply with the notice, the Commissioners may carry out the works so required and may recover from that person the cost of so doing.

(3) Nothing in this article applies to—

- (a) any operations or works specifically authorised by any enactment; or
- (b) any operations or works of a statutory undertaker.

(4) Any person who without reasonable excuse contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Control of certain operations and works of statutory undertakers

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

(2) Subject to paragraph (3), a statutory undertaker must not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Commissioners and has supplied the Commissioners with such particulars as they may reasonably require.

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

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

(5) Any person who, without reasonable excuse, contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

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

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

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the licence is granted.

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

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

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

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

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

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

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

(10) Articles 46 to 51 of this Order apply in relation to the holder of a works licence as respects the works which are authorised by the licence as they do in relation to the Commissioners as respects tidal works with all references to the Commissioners being substituted by references to the holder of the works licence.

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

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

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

without the consent of the statutory undertaker concerned.

Licence to dredge

44.—(1) The Commissioners may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the harbour.

(2) Application for a dredging licence must be made in writing to the Commissioners and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations in respect of which the application is made.

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

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

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

(6) Unless otherwise agreed by the Commissioners any materials (other than wreck within the meaning of section 255(1) of the Merchant Shipping Act 1995(**18**)) taken up or collected by means of dredging in pursuance of a dredging licence must, in so far as they are not the property of the Commissioners before being taken up and collected, but subject to the provisions of article 43, become the property of the Commissioners, and the Commissioners may use, appropriate or dispose of any such material.

Appeals in respect of works or dredging licences

45.—(1) Where—

- (a) the Commissioners have refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or

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

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

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

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

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

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

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

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

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

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

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

Lights on tidal works during construction

47.—(1) The Commissioners must at or near a tidal work during the whole time of its construction, extension, enlargement, alteration, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Welsh Ministers from time to time direct.

(2) If the Commissioners fail to comply with any direction given under paragraph (1), they are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

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

(2) If the Commissioners fail to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction under it, the Commissioners are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

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

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Welsh Ministers may include that part of the work, or any portion of it, in any notice under paragraph (1).

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

Survey of tidal works

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

Permanent lights on tidal works

51.—(1) After the completion of a tidal work the Commissioners must at its outer extremity exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1) they are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART 7

FINANCE

Publication of Commissioners' annual statement of accounts

52. As soon as reasonably practicable after their annual statement of accounts is prepared, the Commissioners must—

- (a) make available a copy of the statement for a period of three months at the offices of the Commissioners for inspection free of charge by members of the public and must, subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy; and
- (b) send a copy of the statement to the Welsh Ministers and each of the local authorities.

Borrowing powers

53.—(1) The Commissioners may from time to time borrow upon the security of all or any of the revenues and property of the Commissioners and by any method or methods they see fit, such sums of money as they think necessary.

(2) But—

- (a) the amount outstanding in respect of monies borrowed under this article must not at any time exceed £5,000,000;
- (b) in calculating for the purpose of this article the amount outstanding in respect of monies borrowed by the Commissioners any sums borrowed for the purpose of repaying within twelve months of the date of borrowing any sum for the time being outstanding by way of principal on any amount previously borrowed must be excluded.

(3) Monies borrowed by the Commissioners under this article may be applied only to purposes to which capital money is properly applicable.

(4) For the purposes of paragraph (3), purposes to which capital money is properly applicable are deemed to include—

- (a) the payment of any interest falling due within the five years immediately following the date of the borrowing of any sum of money borrowed by the Commissioners under this article; and
- (b) the repayment within twelve months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

Temporary borrowing

54.—(1) The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums as the Commissioners may require for meeting their obligations or discharging their functions under or in pursuance of any enactment.

(2) But the total amount outstanding at any one time of the money borrowed under this article must not exceed £100,000.

Adjustment of borrowing limits

55.—(1) On each anniversary of the new constitution date, the sums mentioned in articles 53 and 54 must be adjusted in line with any movement (calculated to one decimal place) in the index which occurred during the year ended on 31 December immediately preceding the anniversary in question.

(2) Any adjustment referred to in paragraph (1), must be recorded in the next following annual statement of accounts prepared by the Commissioners.

Reserve fund

56. The Commissioners may establish and maintain a reserve fund and may determine the monies to be carried to the credit of that fund, its management and the application for the purposes of the Commissioners of the monies comprised in it.

Audit of accounts

57. The accounts of the Commissioners must be audited annually by an auditor or firm of accountants appointed by the Commissioners and a person or firm is not qualified to be appointed for that purpose unless that person or firm is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006(19).

PART 8

MISCELLANEOUS

Advisory Committee

58.—(1) The Commissioners must establish a committee to be known as the Saundersfoot Harbour Advisory Committee, which they must consult (except in cases of special urgency) on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) Subject to the provisions of this article, the advisory committee is to consist of not less than seven members appointed by the Commissioners, of whom—

- (a) one is to be appointed on the nomination of the Royal Yachting Association;
- (b) one is to be appointed on the nomination of the Pembrokeshire Coast National Park Authority;
- (c) one is to be appointed following consultation with persons who, in the opinion of the Commissioners, are representative of local fishing interests in the harbour;
- (d) one is to be appointed on the nomination of the Saundersfoot Sailing Club;
- (e) one is to be appointed following consultation with persons who, in the opinion of the Commissioners are representative of commercial interests in the harbour other than boating and fishing; and
- (f) at least two must be appointed to represent such persons interested in the harbour, other than those mentioned in the preceding sub-paragraphs of this paragraph, as the Commissioners from time to time think fit.

(3) If it appears to the Commissioners in the case of any of the appointments referred to in paragraph (2) that—

- (a) the body by whom the nomination is to be made has refused or failed to nominate a member after being requested by the Commissioners to do so, or
- (b) the body by whom any of the said nominations is to be made has ceased to have an identifiable existence,

the appointment in question may be made by the Commissioners after consultation with such persons (if any) appearing to the Commissioners to be representative of the interests represented, or formerly represented, by the nominating body specified in the relevant sub-paragraph of paragraph (2) as the Commissioners consider appropriate.

(4) The Commissioners must take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by the advisory committee whether or not the committee has been consulted by the Commissioners on the matter, recommendation or representation so referred or made.

(5) The advisory committee may determine its own quorum and procedure and must appoint a chairman.

(6) An individual member of the advisory committee may, on giving notice in writing to the chairman of the committee, send a substitute to any meeting of the body.

(7) A member of the advisory committee holds office for the period of three years from the date of appointment and at the end of the period is eligible for re-appointment.

(8) A member of the advisory committee may resign office at any time by notice in writing given to the chief executive of the Commissioners.

(9) The Commissioners must provide reasonable accommodation for the meetings of the advisory committee and must defray such reasonable expenses as may be incurred by the advisory committee in connection with the provision of secretarial services for the advisory committee.

(10) The Commissioners may pay the travel and subsistence costs of advisory committee members.

Defence of due diligence

59.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it will be a defence for the Commissioners to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

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

- (a) article 46;
- (b) article 47;
- (c) article 48; and
- (d) article 51.

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Commissioners are not, without leave of the court, entitled to rely on that defence unless, within a period of at least seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Boarding of vessels

60. A duly authorised officer of the Commissioners may, on producing written authority if so required, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw of the Commissioners relating to the harbour, including its enforcement;
- (b) to prevent or extinguish fire;

but, except in an emergency, no entry is to be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice must have annexed to it a copy of this article.

Obstruction of officers

61.—(1) Any person who—

- (a) intentionally obstructs an officer of the Commissioners acting in pursuance of this Order;

- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information which that officer may require for the purpose of the performance of his or her 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 such information 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

62.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order 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 harbour)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally, or subject to terms and conditions.

(3) For the purposes of this article, “government department” includes the Welsh Ministers where appropriate.

Saving for Trinity House

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

Revocation

64. The 1958 Order is revoked.

Costs of Order

65. All costs, charges and expenses preliminary to, and of and incidental to, the preparing for, obtaining and passing of this Order, or otherwise in relation to it, must be paid by the Commissioners.

Alun Davies
Deputy Minister for Agriculture, Food, Fisheries
and European Programmes, under authority
of the Minister for Business, Enterprise,
Technology and Science, one of the Welsh
Ministers

21 June 2011