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STATUTORY INSTRUMENTS

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**1996 No. 2103**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Ilfracombe Harbour Revision Order 1996**

*Made* - - - - - *6th August 1996*

*Coming into force* - - - - - *19th August 1996*

Whereas the North Devon District Council have applied for a Harbour Revision Order under section 14 of the Harbours Act 1964(1) (hereinafter called “the Act”);

And whereas the Secretary of State for Transport has, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment;

And whereas objections made pursuant to paragraph 3(a) of the said Schedule 3 have been withdrawn;

And whereas the Secretary of State for Transport is satisfied as mentioned in subsection (2)(b) of the said section 14:

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(4)) in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:—

**Citation and commencement**

1.—(1) This Order may be cited as the Ilfracombe Harbour Revision Order 1996.

(2) The Ilfracombe Harbour Orders 1870 to 1900(6), Part II of the Ilfracombe Harbour and Improvement Act 1905(7), and this Order may be cited as the Ilfracombe Harbour Act and Orders 1870 to 1996.

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- (1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14 and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.
- (2) Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1336), regulations 3 and 4.
- (3) OJNo. L175, 5.7.85, p.40.
- (4) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (5) S.I. 1981/238.
- (6) Confirmed by 1870 c.lxxxii, 1873 c.lxiii and 1900 c.lx. The Order confirmed by 1897 c.lxxxii was repealed by the Ilfracombe Harbour and Improvement Act 1905 (c.xxxix), section 9.
- (7) 1905 c.xxxix.

(3) This Order shall come into force on 19th August 1996.

## **Interpretation**

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

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(8);

“the Council” means the North Devon District Council;

“the deposited plan” and the “deposited section” means the plan and section prepared in duplicate, signed by an Assistant Secretary of the Department of Transport and marked “Plan and section referred to in the Ilfracombe Harbour Revision Order 1996” of which one copy is deposited at the Department of Transport and one copy at the offices of the Council;

“the harbour” means the harbour of Ilfracombe within the limits described in article 6 of the Ilfracombe Harbour Order 1990;

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

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

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

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

“the works” means the works authorised by article 4 and described in article 5 of this Order or either of them and any works constructed under article 7 of this Order or any part of the said works and includes those works as maintained, renewed, extended, enlarged, improved or altered under article 8 of this Order.

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

3.—(1) The Act of 1847 (except sections 6 to 13, 16 to 19, 23, 25, 27, 31 to 33, 48, 49, 50, 66, 67, 79 to 82, 84 to 90, 94, 95, 97 to 99, 101 and 102), so far as the same is applicable for the purposes and not inconsistent with the provisions of this Order is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (9) below. The modifications set out in the said paragraphs (2) to (9) shall also apply to the said Act as incorporated with the Ilfracombe Harbour Orders 1870 to 1900.”

(2) The expression “the special Act” shall mean this Order and the expression “the undertakers” shall mean the Council.

(2) Section 15 shall have effect as if the words from “shall forfeit” to the end of the section were deleted and there were substituted therefor the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”.

(4) Section 20 shall have effect as if the words “in addition to the lands authorised to be compulsorily taken by them under the powers of the special Act” were omitted and as if the words “or lease” were inserted after the words “willing to sell” and as if the words “or taking on lease” were inserted after the words “for the purchase”.

(5) Section 52 in its application to the harbour shall extend to empower the harbour master to give directions prohibiting the mooring of vessels in any particular part or parts of the harbour.

(6) Section 53 shall not be construed as requiring the harbour master to serve a notice in writing of his directions upon the master of a vessel but such directions may be given orally or otherwise communicated to such master.

(7) Section 63 shall be read and have effect as if for the words “to a penalty not exceeding five pounds” there were substituted the words “on summary conviction to a fine not exceeding level 3 on the standard scale” and for “£1” there were substituted “one tenth of level 3 on the standard scale”.

(8) Section 69 shall have effect as if for the words “shall forfeit” there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale and a further” and for “£2” there were substituted “one tenth of level 4 on the standard scale”.

(9) (a) For the purposes of section 83 of the Act of 1847 as incorporated with the Ilfracombe Harbours Orders 1870 to 1900 and with this Order and for the purposes of any byelaws made under section 16 of Part II of the Ilfracombe Harbour and Improvement Act 1905 sections 236 to 238 of the Local Government Act 1972(9) shall apply to those Orders and to the said Act as if each of them were such an enactment as is referred to in section 236(1) of the said Act of 1972, and—

(i) the said section 236 shall have effect as if in subsection (7) thereof after the word “confirm” where it first occurs in the subsection the words “with or without modification” were inserted; and

(ii) for the purposes of section 236(11) of the said Act of 1972 the confirming authority for byelaws as made under the said section 83 shall be the Secretary of State.

(b) If the Secretary of State, on considering byelaws made by the Council relating to the harbour and submitted under the said section 236 as having effect in accordance with paragraph (a) above, proposes to make a modification which appears to him to be substantial, then

(i) he shall inform the Council and require the Council to take any steps he considers necessary for informing persons likely to be concerned with the modifications; and

(ii) he shall not confirm the byelaws without the consent of the Council to the modification and until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the modification by the persons who have been informed of it.

### **Power to construct works**

4. Subject to the provisions of this Order, the Council may, when they have acquired the necessary lands or obtained sufficient interests therein, construct and maintain the works in the lines and situations shown on the deposited plan and within the limits of deviation and according to the levels shown on the deposited section.

### **Description of works**

5. The works authorised by this Order are the following works in the Parish of Ilfracombe in the District of North Devon in the County of Devon—

A slipway constructed of four longitudinal reinforced concrete beams supported by eight cross beams with a surface of precast concrete planks commencing at a point on the harbour wall 28 metres or thereabouts south from the junction of Hierns Lane and The Strand and extending into Ilfracombe Harbour for 49 metres with an overall width of 8 metres.

### **Powers to cease in certain events**

6. If the works are not substantially commenced within ten years from the coming into force of this Order the powers conferred on the Council by article 4 of this Order shall cease.

### **Subsidiary works**

7.—(1) Subject to the provisions of this Order the Council may from time to time erect, construct, operate, maintain and temporarily or permanently repair all such works and conveniences as in the opinion of the Council may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the works, but only temporary works or conveniences may be erected or constructed outside the limits of deviation.

(2) On the completion of the works the Council shall remove all temporary works placed by them under the powers of this article on, under or over land below the level of high water.

### **Alteration and improvement of works**

8. Subject to the provisions of this Order, the Council may from time to time maintain, renew, extend, enlarge, improve and alter the works but nothing in this article shall authorise the Council to deviate laterally beyond the limits of deviation.

### **Power to dredge**

9.—(1) Subject to the provisions of this Order the Council may from time to time deepen, dredge, scour, cleanse, alter and improve the harbour for the purpose of affording uninterrupted means of access to the works or the accommodation of vessels thereat.

(2) Subject to paragraph (3) below, the Council may use, appropriate or dispose of any material (other than a wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>(10)</sup>) from time to time dredged by them from the harbour).

(3) No materials of the kind described in paragraph (2) above shall be deposited below the level of high water otherwise than in such a position and under such conditions or restrictions as may be approved or prescribed by the Secretary of State, and nothing in section 73 of the Act of 1847, as incorporated with this Order, shall apply to any deposit in accordance with this paragraph.

### **Power to deviate**

10. Subject to the provisions of this Order, the Council in constructing the works may deviate laterally from the lines or situations thereof shown on the deposited plan to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works shown on the deposited section upwards to any extent not exceeding three metres or downwards to any extent.

### **Obstruction of works**

11. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of the works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Tidal works not to be executed without approval of Secretary of State**

12.—(1) A tidal work shall not be erected, constructed, renewed, extended, enlarged, improved or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.

(2) If a tidal work is erected, constructed, renewed, extended, enlarged, improved or altered in contravention of this article—

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(10) 1995 c. 21.

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

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Council.

### **Provisions against danger to navigation**

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

(2) If the Council fail to notify Trinity House as required by this article or to comply in any respect with a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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

**14.**—(1) Where a tidal work is abandoned, or allowed to fall into decay, the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Order and consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or allowed to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this Article.

(3) If, on the expiration of thirty days from the date when a notice under this article is served upon the Council, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Council.

### **Survey of tidal works**

**15.** The Secretary of State may at any time if he deems it expedient 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 Secretary of State in any such survey and examination shall be recoverable from the Council.

### **Lights on tidal work during construction**

**16.**—(1) The Council shall at or near a tidal work during the whole time of the erection, construction, renewal, extension, enlargement, improvement or alteration thereof 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 Secretary of State shall from time to time direct.

(2) If the Council fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

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

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

(2) If the Council fail to comply in any respect with a direction given under this article they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Defence of due diligence**

18.—(1) In any proceedings for an offence under articles 13, 16 or 17 of this Order, it shall be a defence for the Council to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence made under paragraph (1) of this article involves an allegation that the commission of the offence was due to the act or default of another person, the Council shall not, without the leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, they have served on the prosecutors a notice in writing giving such information as was then in their possession identifying or assisting in the identification of that other person.

### **Removal of vehicles, etc.**

19.—(1) If a vehicle or boat is left without the permission of the Council—

- (a) in any place where it is likely to obstruct or interfere with the use of the works; or
- (b) on any part of the works where the parking of vehicles or boats is prohibited by notice erected by the Council;

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

(2) Any notice erected under paragraph (1)(b) above shall be conspicuously posted in or close to the place to which it relates.

(3) (a) Where the Council in exercise of the powers of this article remove a vehicle or boat or cause it to be removed they shall as soon as practicable report that fact to a constable or to a police station.

(b) The expenses of and incidental to the removal of a vehicle or boat under this article shall be recoverable from any person responsible.

(c) For the purposes of this paragraph “person responsible” means—

- (i) the owner of the vehicle or boat at the time when it was put in the place from which it was removed under paragraph (1) above, unless he shows that he was not concerned in, and did not know of, its being put there; or

(ii) any person by whom the vehicle or boat was put in that place.

(4) If the Council in exercise of the powers of this article remove a vehicle to a place not readily visible from the place whence it is so removed they shall, 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 for the purposes

of the Road Vehicles (Registration and Licensing) Regulations 1971(11) or any other regulations having the like effect for the time being in force, at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) above shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the works.

#### **Power to lease, etc.**

**20.** The Council may lease or grant for harbour purposes the use or occupation of, or any right or interest in, or over, any lands, works, buildings, equipment or other property forming part of the works for such period and on such terms and conditions as shall be agreed between the Council and the person taking the same.

#### **Crown rights**

**21.—**(1) Nothing in this Order shall affect prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise the Council to take, use, enter upon or in any manner interfere with any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

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

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

#### **Saving for Trinity House**

**21.** Nothing in this Order shall prejudice or derogate from any of the rights or privileges or the jurisdiction or authority of Trinity House.

Signed by authority of the Secretary of State for Transport.

6th August 1996

*R.E. Clarke*  
An Under Secretary in the  
Department of Transport

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order enables the North Devon District Council to provide a launchway for the lifeboat from the new lifeboat station in The Strand, Ilfracombe and extending into the bed and foreshore of Ilfracombe Harbour.

The applicants for this Order are the North Devon District Council.

The deposited plan and deposited section referred to in articles 2, 4 and 10 of the Order may be inspected at any of the following addresses—

North Devon District Council, Civic Centre, Barnstaple, North Devon EX31 1EA.

Ilfracombe Town Council Offices, Northfield Road, Ilfracombe, Devon.

Department of Transport, Ports Division, 1st Floor, Great Minster House, 76 Marsham Street, London SW1P 4DR.

The Order contains provisions for the operation and maintenance of the works.