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STATUTORY INSTRUMENTS

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1981 No. 124

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Fowey Harbour Revision Order 1980**

*Made* - - - - - 24th October 1980

*Laid before Parliament* 3rd December 1980

*Coming into Operation* 3rd February 1981

The Minister of Transport in exercise of the powers conferred by section 14 of the Harbours Act 1964(a) and now vested in him(b) and of all other powers enabling him in that behalf, and on the application of the Fowey Harbour Commissioners, hereby makes the following Order:—

*Citation and commencement*

1.—(1) This Order may be cited as the Fowey Harbour Revision Order 1980 and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965(c).

(2) The Fowey Harbour Order 1937(d), the Fowey Harbour Order 1960(e) and this Order may be cited together as the Fowey Harbour Orders 1937 to 1980.

*Interpretation*

2. Except where the context otherwise requires, any reference in this Order to an enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by any subsequent enactment, including this Order.

*Powers as to moorings, etc.*

3.—(1) Without prejudice to any other powers or rights which are vested in the Commissioners in that behalf (but subject to paragraph (3) of this article), the Commissioners may provide, place, lay down, maintain, use and have moorings in the harbour on land owned or leased by the Commissioners or in which they hold an appropriate interest, or any other land with the consent in writing of the owner or lessee thereof or of any other person having an appropriate interest therein.

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(a) 1964 c. 40.

(b) S.I. 1970/1681 and 1979/571.

(c) 9 & 10 Geo. 6 c. 18; 1965 c. 43.

(d) 1 Edw. 8 & 1 Geo. 6 c. lxxii.

(e) 8 & 9 Eliz. 2 c. xxi.

(2) Without prejudice and subject as aforesaid, the Commissioners may from time to time grant a licence to any person to provide, place, lay down, maintain, use and have existing or future moorings at such place or places and for such number of boats in the harbour as may be specified in the licence and on such terms and conditions as they may think fit:

Provided that—

- (a) nothing in any such licence shall entitle any person to provide, place, lay down, maintain, use or have any mooring on land not owned by or let to him nor owned by or let to the Commissioners or in which he has or they have no appropriate interest;
- (b) subject to proviso (c) below, the Commissioners shall not refuse to grant a licence—
  - (i) unless they are satisfied that the placing, laying down, maintenance or use of the mooring to which the application relates would constitute a danger to or interfere with the navigation of vessels or boats in the harbour; or
  - (ii) to an owner or lessee of any land not leased by the Commissioners with respect to a mooring on that land existing on 1st January 1979;
- (c) if—
  - (i) by reason of representations made to the Commissioners by the South West Water Authority or for any other reason the Commissioners are satisfied that the granting of a licence for the provision, placing, laying down, maintaining or using of a mooring for any purpose under this article would be likely to prejudice the rights of the holder for the time being of a licence to fish by net for salmon and migratory trout issued by that Authority under the Salmon and Freshwater Fisheries Act 1975(a) in respect of any area in which, on 1st January 1979, those rights were, or were capable of being, exercised; and
  - (ii) it is reasonably practicable to grant such a licence for, or otherwise make available, an alternative mooring for the said purpose;the Commissioners shall refuse to grant the licence applied for under this article or shall grant it subject to such conditions as they think necessary to avoid the likelihood of such prejudice.

(3) The powers conferred on the Commissioners by paragraphs (1) and (2) of this article and any other powers or rights which they may have to provide or license moorings shall, in the area of the harbour lying between Bodmin Pill and the confluence of the river Fowey and the river Lerryn, only be exercisable at any time when there are no more than seven hundred moorings in that area.

(4) Where, for the purposes of proviso (c) to paragraph (2) above, the Commissioners decide that it is not reasonably practicable to grant a licence for, or otherwise make available, an alternative mooring they shall notify the South West Water Authority and the Authority may, within twenty-eight days from the date on which they receive that notification, serve on the Commissioners notice in writing requiring the matter to be referred to and settled by a

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(a) 1975 c. 51.

single arbitrator to be agreed between the Commissioners and the Authority or, failing agreement, to be appointed on the application of either the Commissioners or the Authority (after notice in writing to the other), by the President for the time being of The Law Society.

(5) Any licence granted under paragraph (2) of this article shall be valid only for such period not exceeding three years commencing with its date as may be specified in the licence.

(6) The Commissioners may charge a reasonable fee for—

(a) the use of any moorings provided by the Commissioners under paragraph (1) of this article; or

(b) the granting of a licence under paragraph (2) of this article.

(7) The Commissioners may confer total or partial exemptions from, allow rebates to, or make compositions with, any person with respect to the fees prescribed by the Commissioners under this article and may thereafter vary or extinguish any such exemption, rebate or composition.

(8) Any licence to lay a mooring issued by the Commissioners and in force immediately before the coming into operation of this Order shall, unless otherwise amended, revoked or suspended, continue to have effect until the date of expiry provided for in the licence and shall be deemed for the purposes of this Order to have been granted under this article.

(9) In this article and in article 4 of this Order "moorings" includes mooring posts, floating jetties, pontoons, buoys or like apparatus or facilities.

*Obstruction of moorings, etc.*

4.—(1) Any person who, in the harbour—

(a) intentionally obstructs any person acting under the authority of the Commissioners in providing, placing, laying down, maintaining, using or having any moorings;

(b) intentionally pulls up or removes any moorings;

(c) other than in the case of an emergency, causes a vessel to be moored except at a mooring licensed by the Commissioners under article 3 of this Order or with the consent of the harbour master; or

(d) provides, places, lays down, maintains, uses or has any mooring not provided or licensed by the Commissioners under the said article;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £50.

(2) If any person contravenes paragraph (1)(d) of this article, the Commissioners may remove the mooring in question and recover from that person the expenses incurred by them in so doing.

*Penalties for offences against byelaws*

5. Section 46(5) of the Fowey Harbour Order 1937 (which provides for the imposition of penalties for the breach or non-observance of byelaws made by the Commissioners) shall be amended by substituting for the words "five pounds" the words "fifty pounds" and byelaw 43 (Penalties) of the Fowey Harbour (General) Byelaws 1975 shall be amended by substituting for the reference to "£5" a reference to "£50".

**Abolition of exemption from payment of harbour charges in respect of certain vessels, etc.**

6. Yachts and pleasure craft not exceeding 2 tons register ordinarily kept in the harbour shall be liable to harbour charges for using the harbour and demanded by the Commissioners pursuant to section 25 of the Fowey Harbour Order 1937 and, accordingly, the Schedule to that Order (to the extent that it has not been repealed by the Harbours Act 1964) is hereby repealed.

**Costs of Order**

7. The costs, charges and expenses of and incidental to the preparing and obtaining of this Order, and otherwise in relation thereto (other than costs, charges and expenses which any person is lawfully ordered to pay by the Minister of Transport or a joint committee of both Houses of Parliament or any costs, charges and expenses incurred in opposing this Order), shall be paid by the Commissioners.

**Norman Fowler,**  
Minister of Transport.

24th October 1980.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order has the following effects:—

(1) It confers on the Fowey Harbour Commissioners additional powers to provide, use and hold moorings in the harbour, and, subject to certain obligations and rights, to license for periods not exceeding 3 years the provision, use and holding of existing and future moorings, but in the harbour area between Bodmin Pill and the confluence of the rivers Fowey and Lerryn these powers will not be exercisable at any time when there are more than 700 moorings in that area.

(2) It confers on the Commissioners additional powers to charge a reasonable fee for the use of their moorings or for the grant of a mooring licence.

(3) It makes it an offence—

- (a) intentionally to obstruct authorised persons in the provision, use or holding of moorings;
- (b) intentionally to pull up or remove a mooring;
- (c) except in an emergency, or with the harbour master's consent, to cause a vessel to be moored at an unlicensed mooring; or
- (d) to provide, use or have a mooring not provided or licensed by the Commissioners;

and for a contravention of sub-paragraph (d) above allows the Commissioners to remove the mooring and to recover the expenses of removal.

(4) It increases the penalties for infringement of byelaws made by the Commissioners.

(5) It removes an exemption from harbour charges in respect of yachts and pleasure craft not exceeding 2 tons register.

This Order being subject to Special Parliamentary Procedure the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965 determine the date upon which it comes into operation.

The applicants for the Order are the Fowey Harbour Commissioners, Harbour Office, Albert Quay, Fowey, Cornwall.

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Printed in England by Oyez Press Limited and published by Her Majesty's Stationery Office

850/P3224 B88 K6 2/81

£1.10 net

ISBN 0 11 016124 6