STATUTORY INSTRUMENTS

1968 No. 1062

HARBOURS, DOCKS, PIERS AND FERRIES

The Ports Welfare Amenities (Inquiries Procedure) Regulations 1968

Made - - -	*4th July* 1968
Laid before Parliament	*15th July* 1968
Coming into Operation	*24th July* 1968

The Secretary of State in exercise of her powers under section 52(6) of the Docks and Harbours Act 1966(a) and of all other powers enabling her in that behalf, hereby makes the following Regulations :—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Ports Welfare Amenities (Inquiries Procedure) Regulations 1968 and shall come into operation on 24th July 1968.

(2) The Interpretation Act 1889(b) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

"the Act" means the Docks and Harbours Act 1966 ;

"appointed person" means a person appointed by the Secretary of State to hold an inquiry ;

"the Board" means the National Dock Labour Board or any other body for the time being constituted or prescribed under the Dock Workers (Regulation of Employment) Act 1946(c) to be responsible for the administration of any scheme under that Act ;

"inquiry" means an inquiry with respect to which these Regulations have effect ;

"licensing authority" means a body having the function of issuing licences under the Act ;

Application of Regulations

2. These Regulations shall have effect with respect to the proceedings at or in connection with inquiries held in connection with—

(*a*) the consideration and determination by the Secretary of State of any appeal or objection made under any provision of Part II (Welfare Amenities) of the Act ;

(a) 1966 c. 28. (b) 1889 c. 63. (c) 1946 c. 22.

(*b*) any proposal under section 30 (providing for revocation of a licence on failure to comply with a welfare amenity scheme) of the Act to exercise the Secretary of State's power to revoke a licence issued under the Act;

(*c*) any other matter about which the Secretary of State has functions under Part II of the Act.

Time and place of hearing

3.—(1) A date, time and place for the holding of the inquiry shall be fixed and may be varied by the Secretary of State, who shall give or cause to be given not less than 28 days' written notice of such date, time and place and of the appointment of the appointed person to every person entitled under these Regulations to appear and be heard at the inquiry whose name and address are known to the Secretary of State.

(2) In any case in which the Secretary of State so determines, she may require the appointed person to take one or more of the following steps, namely—

(*a*) to publish in one or more newspapers circulating in the locality in which the port in question is situated notice of the hearing;

(*b*) to send notice of the hearing to such persons as the Secretary of State may specify;

(*c*) to post notice of the hearing in a conspicuous place or conspicuous places in or near to the port in question,

but the requirement as to the period of notice contained in the foregoing paragraph of this Regulation shall not apply to any such notice.

Appearances at inquiry

4. The following persons shall be entitled to appear and be heard at an inquiry—

(*a*) where the inquiry is held in connection with any matter of a kind referred to in Regulation 2(*a*)—

(i) any appellant or objector whose appeal or objection occasioned the inquiry;

(ii) the Board;

(iii) any other person whose obligations under a welfare amenity scheme might in the opinion of the Secretary of State be varied by any modifications of the scheme likely to be made in the light of an objection made under section 25(4) of the Act to the scheme or to any amendment thereof;

(iv) such persons as the appointed person may in his discretion determine being persons whose interests will not, in his opinion, be adequately represented by any other person entitled under this Regulation to appear and be heard at the inquiry who does appear;

(v) the Chief Inspector of Factories appointed under the Factories Act 1961(**a**);

(*b*) where the inquiry is held in connection with any matter of a kind referred to in Regulation 2(*b*)—

(i) the holder of the licence proposed to be revoked;

(ii) the licensing authority which issued the said licence; and

(iii) the Board;

(**a**) 1961 c. 34.

(*c*) where the inquiry is held in connection with any matter of a kind referred to in Regulation 2(*c*), such persons as the appointed person may in his discretion determine.

Power to require attendance of witnesses and copies of documents to be furnished

5.—(1) The appointed person may, on the application of a person entitled to appear and be heard at an inquiry or otherwise, cause to be served on any person appearing to him to be likely to be able to give material evidence or to produce any document likely to be material evidence, a notice requiring that person to attend at the inquiry at the time and place specified in the notice to give evidence or produce the document.

(2) The appointed person may, on the application of a person entitled to appear and be heard at an inquiry, or of a person qualified under Regulation 6 to represent him at the inquiry, made either by notice to the appointed person or at the inquiry, require any other person entitled to appear and be heard at the inquiry by notice served on him to furnish to the first-mentioned person so entitled a copy of any document appearing to the appointed person to be likely to be relevant to the subject matter of the inquiry and may appoint the time at or within which the copy of the document is to be furnished, and may direct that the original of any such document shall before the inquiry be produced to the first-mentioned person if he so requires. Before granting any such application the appointed person may, if he thinks fit, require the person making the application to give notice of it to such other persons as the appointed person may specify. Such notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purpose by the appointed person. If after any such notice is given the appointed person decides to hear the person making the application in support of it he shall afford to any person who has submitted an objection in accordance with such notice an opportunity to be heard in support of his objection.

(3) The appointed person may extend or postpone any time appointed by him for the furnishing of a copy of a document under paragraph (2) of this Regulation notwithstanding that the time so appointed may have expired or passed.

(4) Nothing in this Regulation shall be interpreted as requiring any person to give any evidence or to produce any document which he could not be compelled to give or produce in proceedings before the High Court, or, if the inquiry is held in Scotland, the Court of Session.

(5) A person on whom a requirement has been made under paragraph (1) of this Regulation and a person on whom a requirement has been made under paragraph (2) of this Regulation on an ex parte application, may apply to the appointed person to vary or set aside the requirement. No such application to vary or set aside shall be entertained (in a case where a time has been appointed under this Regulation in relation to the requirement) unless it is made before the time so appointed or, as the case may be, the expiration of that time. Notice of the application shall be given to the person on whose application the requirement was made.

(6) Every notice containing a requirement under paragraph (1) or (2) of this Regulation shall contain a reference to the fact that under section 52(7) of the Act any person who without reasonable excuse fails to comply with any such requirement is liable on summary conviction to a fine not exceeding £50 or imprisonment for a term not exceeding three months or both.

Representation

6.—(1) A person entitled or permitted by the appointed person to appear and be heard at an inquiry may be heard in person or be represented by counsel or solicitor or by a representative of a trade union or of an employers' association or with the leave of the appointed person by any other person.

(2) The Board or any body corporate may appear by their clerk or other officer appointed for the purpose by them, or by counsel or solicitor.

(3) Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear on behalf of some or all persons so interested.

(4) The Chief Inspector of Factories may be heard in person or be represented by any officer of the Department of Employment and Productivity or by counsel or solicitor.

Procedure at Inquiry

7.—(1) Except as otherwise provided in these Regulations, the procedure at and in connection with the inquiry shall be such as the appointed person shall in his discretion determine.

(2) The hearing shall take place in public, unless the appointed person determines at the request of any person appearing at the hearing that the hearing shall be in private, but in any case a member of the Council on Tribunals shall be entitled to attend the hearing in his capacity as such member.

(3) A person entitled to appear and be heard may if he so desires give evidence on his own behalf.

(4) If a person entitled to appear at an inquiry shall desire to submit representations in writing for consideration by the appointed person at the hearing that person shall send such representations to the appointed person not less than seven days before the hearing and shall at the same time send a copy thereof to the Board and the licensing authority for the port in question if they are entitled to appear and be heard at the inquiry. A copy of every such representation shall be made available by the appointed person at the hearing for inspection by any person appearing.

(5) If any person entitled to appear and be heard at the inquiry fails so to appear the appointed person may at his discretion proceed with the inquiry in the absence of that person or may adjourn the hearing to a later date: Provided that before concluding an inquiry in the absence of a person entitled to appear and be heard the appointed person shall consider any representations submitted by that person in pursuance of the last foregoing paragraph of this Regulation.

(6) Where the appointed person so requires, witnesses shall give evidence on oath, and for that purpose the appointed person may administer an oath in due form.

(7) The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Procedure after Inquiry

8.—(1) The appointed person shall after holding the inquiry report in writing to the Secretary of State on his findings at the inquiry and shall recommend to the Secretary of State what decision the Secretary of State should make in the matter.

(2) Where the Secretary of State—

(*a*) differs from the appointed person on a finding of fact; or

(*b*) after the close of the inquiry takes into consideration any new evidence (including expert opinion on a matter of fact) or any new issue of fact (not being a matter of government policy) which was not raised at the inquiry,

and by reason thereof is disposed to disagree with a recommendation made by the appointed person, she shall not come to a decision which is at variance with any such recommendation without first notifying such of the persons entitled to appear and be heard at the inquiry who appeared at the inquiry of her disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or (if the Secretary of State has taken into consideration any new evidence or any new issue of fact, not being a matter of government policy) of asking within 21 days for the re-opening of the inquiry.

(3) The Secretary of State may in any case if she thinks fit cause the inquiry to be re-opened, and shall cause it to be re-opened if asked to do so in accordance with the last foregoing paragraph; and, if the inquiry is re-opened, Regulation 3 shall apply as it applied to the original inquiry, with the substitution in paragraph (1) of "21" for "28".

(4) (*a*) The Secretary of State shall notify her decision, and the reasons therefor, in writing—

(i) in the case of a decision relating to an appeal or objection under any provision of Part II of the Act, to the appellant or objector, the Board and the Chief Inspector of Factories appointed under the Factories Act 1961;

(ii) in the case of a decision relating to a proposal under section 30 of the Act to exercise the Secretary of State's power to revoke a licence issued under the Act, to the holder of the licence proposed to be revoked, the licensing authority which issued the licence and the Board;

(iii) in every case to every person entitled under Regulation 4 to appear and be heard at the inquiry who did appear,

and where a copy of the appointed person's report is not sent with the notification of the decision, the notification shall be accompanied by a summary of the appointed person's conclusions and recommendations;

(*b*) if any person entitled to be notified of the Secretary of State's decision under this paragraph has not received a copy of the appointed person's report, he shall be supplied with a copy thereof on written application made to the Secretary of State within 28 days from the date of her decision;

(*c*) for the purposes of this paragraph "report" does not include documents, photographs or plans appended to the report.

Withdrawal of appeals or objections

9. Any person may withdraw his appeal or objection by notice given to the Secretary of State at any time before the decision of the Secretary of State is notified to him and in that event the appeal or objection shall be treated as disposed of at the time it is withdrawn.

Secretary of State's expenses

10.—(1) The Secretary of State may recover the whole or any part of the expenses incurred by her in relation to an inquiry from all or any of the following persons—

(*a*) the persons appearing at the inquiry;

(*b*) any appellant or objector, whether appearing or not, whose appeal or objection occasioned the inquiry;

(*c*) the Board.

(2) Where the Secretary of State decides to recover any expenses under paragraph (1) of this Regulation, she may make such apportionment thereof as she thinks fit and shall serve on each person from whom expenses are to be recovered a notice specifying the amount of the expenses which that person is liable to pay and the date on which such amount is to be paid.

(3) Any amount specified in a notice served under paragraph (2) of this Regulation shall be a debt due to the Secretary of State from the person liable to pay it and recoverable accordingly.

Costs and expenses

11.—(1) The Secretary of State may on the recommendation of the appointed person in his report of the inquiry, order that any person specified in Regulation 10(1) shall pay to any other such person either a specified sum in respect of the costs incurred by that other person or the amount of those costs to be taxed in default of agreement.

(2) Any costs required by an order under paragraph (1) of this Regulation to be taxed may be taxed in the county court according to such of the scales prescribed by county court rules for proceedings in the county court as shall be directed by the order.

(3) Any specified sum ordered to be paid under paragraph (1) of this Regulation and any costs taxed under the last foregoing paragraph of this Regulation shall be a debt due from the person ordered to pay them to the person to whom they are ordered to be paid and shall be recoverable accordingly.

(4) In relation to inquiries in Scotland, for references in this Regulation to "costs", "the county court" and "county court rules for proceedings in the county court" there shall be substituted respectively references to "expenses", "the sheriff court" and "sheriff court rules for civil proceedings in the sheriff court".

Notices, etc.

12. The provisions of section 55 of the Act shall apply in relation to the sending of all notices and documents required or authorised to be served or sent by these Regulations.

4th July 1968.

Barbara Castle,

First Secretary of State and Secretary of State for Employment and Productivity.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations prescribe the procedure to be followed at and in connection with inquiries held in connection with appeals and objections to the Secretary of State under Part II of the Docks and Harbours Act 1966 or any other matter about which the Secretary of State has functions under Part II of the Act.