

Portsea Harbour Company Act 1984

CHAPTER xviii

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ELIZABETH II



1984 CHAPTER xviii

An Act to vest a landing-place at Portsea in the city of Portsmouth in the Portsea Harbour Company Limited; to relieve Sealink U.K. Limited of all of their powers and obligations relating to the landing-place; to confer certain powers upon the harbour company to enable them to operate the landing-place as a public harbour undertaking; to make other provision for the regulation of the landing-place; and for other and connected purposes. [26th July 1984]

WHEREAS—

(1) By section 10 of The Joint Portsmouth Railway Extension Act 1873 the London and South-western Railway Company and the London, Brighton and South Coast Railway Company were required to, and did, construct a public landing-place (hereinafter referred to as "the landing-place") and by that section the landing-place was made, and ever since its construction has remained, available to the public free of charge: 1873 c. cxviii.

(2) Since its construction the landing-place has been, and still is, used as a terminal for a ferry service operated by the

Portsmouth Harbour Ferry Company PLC (hereinafter referred to as "the ferry company") across Portsmouth harbour between the landing-place and Gosport:

(3) The landing-place was subsequently vested (subject to section 10 of the said Act of 1873), first, in the British Transport Commission, secondly, in the British Railways Board (hereinafter referred to as "the board") and, thirdly, in Sealink U.K. Limited (hereinafter referred to as "Sealink") (in which company it is now vested):

1963 c. xviii.

(4) At the passing of the British Railways Act 1963, the landing-place was vested in the board and section 35 of that Act authorised the board from time to time, on such terms as to payment or otherwise as might be agreed, to set aside and appropriate for the exclusive use of the ferry company a specified part of the landing-place:

(5) Pursuant to the said section 35, the board provided exclusive use of part of the landing-place for the ferry company in return for an annual payment which was intended to make a contribution towards the cost of maintaining the landing-place:

(6) Despite the contribution made by the ferry company, the cost of maintaining the landing-place has continued to be borne substantially by the board and, more recently, by Sealink:

(7) The landing-place will, in the foreseeable future, require to be replaced at considerable cost:

(8) Having regard to the cost of replacing the landing-place and to the fact that it is not relevant to the undertaking of either the board or Sealink, the board applied to Parliament for particular powers which became enacted as section 34 of the

1984 c. vii.

British Railways Act 1984:

(9) Section 34 of the said Act of 1984 conferred power upon Sealink to make reasonable charges for the use by the public of the landing-place:

(10) During the passage of the Bill for the said Act of 1984, the Hampshire County Council, the Portsmouth City Council, the Gosport Borough Council and the ferry company deposited petitions in Parliament in opposition to the clause in the Bill which became section 34 of that Act:

(11) Consequent upon that opposition, Sealink and the ferry company agreed that the powers conferred by this Act should be sought so as to provide for the transfer of the landing-place to the Portsea Harbour Company Limited (hereinafter referred to as "the harbour company"), a wholly-owned subsidiary of the ferry company, and for powers to be conferred upon the

harbour company to enable them to maintain and operate the landing-place (or any replacement therefor) as a public harbour undertaking:

(12) The harbour company are a company limited by shares and were incorporated under the Companies Act 1948 for the purposes of, and pursuant to, the agreement referred to in recital (11) hereof: 1948 c. 38.

(13) It is expedient that the powers contained in this Act be conferred upon the harbour company and that the other provisions of this Act be enacted:

(14) The objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows, that is to say:—

Short title.

1. This Act may be cited as the Portsea Harbour Company Act 1984.

Interpretation.

2. In this Act, unless the context otherwise requires—

"city council" means the Portsmouth City Council;

"harbour company" means the Portsea Harbour Company Limited;

"landing-place" means the landing stage and the approach thereto (which approach consists of a fixed and a hinged gangway) at Portsmouth Harbour which were constructed pursuant to section 10 of The Joint Portsmouth Railway Extension Act 1873 and which are shown respectively hatched and cross hatched black on the signed plan and includes any replacement therefor or for any part thereof; 1873 c. cxviii.

"level of high water" means the level of mean high-water springs;

"limits of jurisdiction" means the limits of jurisdiction referred to in section 6 (Limits of jurisdiction) of this Act;

"Queen's harbour master" means the person appointed as the Queen's harbour master of the dockyard port of Portsmouth under the Dockyard Ports Regulation Act 1865; 1865 c. 125.

"ship passenger and goods dues" has the meaning given to it by section 57 of the Harbours Act 1964; 1964 c. 40.

"signed plan" means the plan signed in quadruplicate by Mr. Paul Dean, the Chairman of the Committee of the House of Commons to whom the Bill for this Act was referred, one copy of which was deposited at each of the following offices, that is to say:—

(*a*) the office of the Clerk of the Parliaments, House of Lords;

(*b*) the Private Bill Office, House of Commons;

(*c*) the offices of the Department of Transport; and

(*d*) the registered office of the harbour company situated at South Street, Gosport, Hampshire PO12 1EP;

"standard scale" has the meaning given to it by section 75 of the Criminal Justice Act 1982;

1982 c. 48.

"statutory maximum" means the prescribed sum as defined by section 32 (9) of the Magistrates' Courts Act 1980;

1980 c. 43.

"tidal work" means so much of the landing-place or any work authorised by this Act 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;

"vessel" means a vessel of any description and includes a ship, boat or raft and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and includes a hovercraft within the meaning of the Hovercraft Act 1968 and any other amphibious vehicle and a seaplane.

1968 c. 59.

Incorporation of Harbours, Docks, and Piers Clauses Act 1847.

1847 c. 27.

3. The Harbours, Docks, and Piers Clauses Act 1847 (except sections 6 to 19, 23 to 25, 31, 42, 48 to 50, 97, 98 and 101), so far as applicable to the purposes of this Act, is hereby incorporated with this Act subject to the following modifications, that is to say:—

(*a*) the expression "the harbour, dock or pier" means the landing-place, the expression "the special Act" means this Act and the expression "the undertakers" means the harbour company;

(*b*) section 63 shall be read and have effect as if the words "liable to" to the end of the section were deleted and there were substituted therefor the words "liable on summary conviction to a fine not exceeding level 3 on the standard scale";

(*c*) section 69 shall be read and have effect as if the words "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 3 on the standard scale";

(*d*) section 77 shall be read and have effect as if the words from "Corporation of Trinity" to the end of the section were deleted and there were substituted therefor the words "Queen's harbour master.";

(*e*) section 85 shall be read and have effect as if the words "in the prescribed manner" to the end of the subsection were deleted and there were substituted therefor the words "by the Secretary of State" and the provisions of sections 236 (3) to (8) and (11) and 238 of the Local Government Act 1972 shall apply to any byelaws made by the harbour company and the said section 238 shall be construed and have effect as if the expression "proper officer" were intended to refer to the secretary of the harbour company and, in its application to the said section 85, subsection (7) of section 236 of the said Act of 1972 shall have effect as if, after the words "the confirming authority may confirm" there were inserted the words "with or without modifications" and, as if at the end of that subsection, there were added the following proviso:— 1972 c. 70.

"Provided that where the Secretary of State proposes to make a modification to a byelaw which appears to him to be substantial he shall inform the harbour company and require them to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the harbour company and by any other persons who have, or are likely to have, been informed of it.";

(*f*) the sections respectively specified in column (1) of Schedule 1 to this Act (being sections creating the offences broadly described in column (2) of that Schedule) shall each have effect as if the maximum penalty which may be imposed on summary conviction of any offence specified for each section were a penalty not exceeding the amount specified in column (4) of that Schedule instead of the penalty, or maximum penalty, specified in column (3) of that Schedule.

Vesting of landing-place in harbour company.

4.—(1) On the passing of this Act the landing-place (together with such rights in or over the fundus of Portsmouth harbour as are appurtenant to the landing-place) shall, by virtue of this section, vest in the harbour company subject to and in accordance with the provisions of this Act but otherwise free from all trusts and encumbrances which existed at the passing of this Act and, accordingly, all the powers and obligations of Sealink U.K. Limited relating to the landing-place are hereby abolished.

(2) The harbour company shall continue and maintain the landing-place as a public landing-place with—

(*a*) a frontage next to the waters of the harbour of at least 30 metres and a width of at least 9 metres with a public approach therefrom consisting of a hinged gangway with a width of at least 2·3 metres and a fixed gangway (leading to Station Approach) with a width of at least 5·7 metres; or

(*b*) such other dimensions as may, from time to time, be agreed with the city council being dimensions sufficient to afford adequate accommodation for vessels using or likely to use the landing-place or, failing such agreement, as may be determined by a single arbitrator to be agreed upon by the parties or, in the case of disagreement, to be appointed on the application of either party (after notice in writing given to the other) by the President of the Institution of Civil Engineers.

Sale, etc., of landing-place to be subject to consent of Secretary of State.

5.—(1) The harbour company may, with the consent in writing and upon such terms, conditions and restrictions as may be approved by the Secretary of State, sell, lease, or assign any interest in the landing-place or any part thereof and, in that event, the purchaser, lessee or assignee may exercise to the extent authorised by his conveyance, lease or instrument of assignment, all or any of the powers conferred upon the harbour company by or under this Act in relation to the landing-place or the relevant part thereof but shall be subject to all the restrictions, liabilities and obligations in respect thereof to which the harbour company is subject and shall perform all the functions of the harbour company conferred by or under this Act in respect of the landing-place or the relevant part thereof.

(2) The harbour company shall, within one month after the date of any such conveyance, lease or assignment as is mentioned in subsection (1) above, give notice in writing to the city council of the date and subject matter of that conveyance, lease or assignment and the names and addresses of all other persons who are parties thereto.

(3) In any case where the harbour company decide to exercise the powers conferred by subsection (1) above, they shall, not less than two months before making a binding offer to any third party or requesting the formal consent of the Secretary of State thereto under subsection (1) above, first offer to treat with the city council for the sale or lease of, or the assignment of the relevant interest in (as the case may be), the landing-place to the city council at the price which the sale, lease or assignment might reasonably be expected to fetch on the open market as between a willing seller and a willing buyer.

(4) The city council may, within two months of receiving written notice to treat from the harbour company, serve a counter-notice in writing of their acceptance or refusal of the harbour company's offer and, where the city council fail to serve such a notice within that period, they shall be deemed to have rejected the harbour company's offer.

(5) Where the city council accept an offer made by the harbour company under subsection (3) above and where there is any dispute as to the price to be paid pursuant to that offer, that dispute shall be settled by arbitration.

(6) Nothing in subsection (3) above shall require the harbour company to treat with the city council where the harbour company propose to dispose of the landing-place or any part thereof for the purpose of ensuring the provision of a replacement for the landing-place or that part and its operation thereafter by the harbour company.

(7) (*a*) If pursuant to section 1 of the Ferries (Acquisition by Local Authorities) Act 1919 the city council, or the Gosport Borough Council, with the consent of the Secretary of State, purchase or accept the transfer of the existing ferry across Portsmouth harbour between the landing-place and Gosport, or either of those councils, or both jointly, provide a ferry service under the powers of section 49 (Power to establish or assist ferry service, etc.) of the Hampshire Act 1983, then as from the date of the purchase or transfer or (as the case may be) such provision of the ferry service the provisions of subsection (1) above in relation to the exercise by the purchaser or assignee of the powers conferred upon the harbour company by or under this Act in relation to the landing-place shall, unless the city council otherwise determine but subject to all the restrictions, liabilities and obligations in respect of the landing-place to which the harbour company is subject, have effect as an assignment by the harbour company on that date of their entire interest in the landing-place to the city council. 1919 c. 75. 1983 c. v.

(*b*) An assignment effected under paragraph (*a*) above shall be subject to such terms and conditions as to consideration and

otherwise as may be agreed between the harbour company and the city council or as, in the event of dispute, may be settled by arbitration and thereafter approved by the Secretary of State under subsection (1) above.

(8) Any dispute between the harbour company and the city council under subsection (5) or (7) (*b*) above shall be determined by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after first giving notice in writing to the other) by the President of the Royal Institution of Chartered Surveyors.

Limits of jurisdiction. 1964 c. 40.

6.—(1) Subject to subsection (2) below the harbour company shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and the powers of the harbour master shall be exercised, within the area which is shown coloured pink on the signed plan and which is the area of Portsmouth harbour over which the landing-place is situated together with so much of the harbour as extends for a distance of 15 metres measured in a straight line drawn at right angles from the northern and western sides of the landing-place.

(2) (*a*) The powers of the harbour company to levy ship, passenger and goods dues shall extend only with reference to vessels which berth or unberth at the landing-place.

(*b*) The jurisdiction of the harbour master conferred by this Act shall only be exercised with reference to vessels which are within the limits of jurisdiction and coming to or departing from the landing-place and vessels within those limits which obstruct the approaches thereto.

(*c*) If at any time there is a conflict between any directions given by the harbour master and any directions lawfully given by the Queen's harbour master, the directions given by the Queen's harbour master shall prevail.

Power for harbour company to maintain and improve landing-place.

7.—(1) The harbour company may, subject to the provisions of this Act, take such steps as they may consider expedient for the development, maintenance, management and improvement of the area within the limits of jurisdiction and the facilities (including the landing-place) provided therein or in connection therewith.

(2) For those purposes, but without prejudice to the generality of the foregoing, the harbour company may—

(*a*) regulate, mark and light the landing-place;

(*b*) subject to section 4 (2) (*b*) above alter, extend, replace and reconstruct the landing-place and any other facilities or works; and

(*c*) construct, maintain, alter, improve, enlarge, replace or extend such temporary or permanent works for the accommodation or convenience of vessels as they think fit, including, without prejudice to the generality of the foregoing part of this paragraph, pontoons, stagings, quays, jetties, piers, approaches, slipways, landing places, berthing heads, mooring posts, mooring buoys, moorings, bollards, walkways, buoys, navigation marks and lights.

Power to dredge.

8.—(1) Subject to section 17 (Crown rights) of this Act, the harbour company may whenever in their opinion it appears expedient for the safety or convenience of navigation or for the maintenance of the landing-place, deepen, widen, dredge, scour and improve so much of the bed and foreshore of Portsmouth harbour as lies within the limits of jurisdiction.

(2) Subject to subsection (3) of this section, any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894) taken up or collected in the course of such operations shall be the property of the harbour company and may be used, sold, removed, deposited or otherwise disposed of as the harbour company may think fit.

1894 c. 60.

(3) The harbour company shall not lay down or deposit any materials in a place below the level of high water except in such position as the Secretary of State may approve and subject to such conditions and restrictions as he may impose.

Provision against danger to navigation.

9.—(1) In case of injury to or destruction or decay of a tidal work, or any part thereof, the harbour company shall forthwith notify the Queen's harbour master and 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 harbour company fail to notify the Queen's harbour master and Trinity House as required by this section or to comply in any respect with a direction given under this section they shall be 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.

10.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the harbour company 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 Act and 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 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 section.

(3) If, on the expiration of 30 days from the date when a notice under this section is served upon the harbour company, 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 harbour company.

Survey of tidal works.

11. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work constructed by the harbour company, 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 harbour company.

Permanent lights on tidal works.

12.—(1) After completion of a tidal work, the harbour company 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 harbour company fail to comply in any respect with a direction given under this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

As to wreck or vessels in which Crown have an interest.

13.—(1) The harbour company shall before taking possession of, raising, removing or selling any wreck or vessel sunk, stranded or abandoned under the powers conferred upon them by this Act or under any other enactment give to the Queen's harbour master notice of their intention so to do and if within 14 days after the receipt of such notice the Queen's harbour master gives to the harbour company—

(*a*) a certificate that the wreck or vessel was sunk, stranded or abandoned by a person acting on behalf of Her Majesty or otherwise by an officer of the Crown acting in the course of his duty as such and that it is not in the national interest that the harbour company should take possession of the wreck or vessel or that the wreck or vessel should be raised, removed or sold; or

(*b*) a notice that the exercise by the harbour company of the rights of recovery conferred under this Act would render the Crown liable directly or indirectly otherwise than as an insurer or re-insurer under a contract of insurance or re-insurance for all or a substantial proportion of the expense incurred by the harbour company;

the harbour company shall not without the consent in writing of the Queen's harbour master take possession of, raise, remove or sell such wreck or vessel:

Provided that in any case which in their opinion is a case of emergency the harbour company may take possession of, raise, remove or sell any wreck or vessel without giving notice of their intention so to do to the Queen's harbour master and in that event the harbour company shall not be entitled to recover from any person the expenses incurred by them in so doing if the effect of such recovery would be to render the Crown so liable.

(2) If the harbour company shall mark, light, watch, buoy, control or give warning to shipping of the presence of any wreck or vessel in respect of which the Queen's harbour master has refused his consent under subsection (1) above the harbour company shall not be entitled to recover the expenses of so doing from the owner of the wreck or vessel.

(3) If the harbour company fail to notify the Queen's harbour master as required by this section or take possession, raise or remove any vessel without the consent of the Queen's harbour master given under this section, the harbour company shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section "owner" means, in relation to any wreck or vessel sunk, stranded or abandoned within the limits of jurisdiction, the owner of the wreck or vessel at the time of sinking, stranding or abandonment thereof.

Restriction on mooring.

14.—(1) Any person who, without reasonable excuse, causes a vessel to be moored alongside the landing-stage comprised in the landing-place except for the purpose of and for such time only as is reasonably necessary for embarking or disembarking passengers, their luggage and parcels, vehicles, articles and merchandise, shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Nothing in subsection (1) above shall apply with respect to the mooring of any vessel at any part of the landing-place in a manner permitted for that vessel under the terms of a setting apart and appropriation of that part effected under section 16 (Appropriation of part of landing-place) of this Act.

Obstruction of officers.

15. Any person who—

(*a*) intentionally obstructs an officer of the harbour company acting in pursuance of this Act; or

(*b*) without reasonable excuse fails to comply with a requirement properly made by such person so acting; or

(*c*) without reasonable cause fails to give to such officer so acting any other assistance or information which he may reasonably require for the purpose of the performance of his functions; or

(*d*) in giving such information as aforesaid makes a statement which he knows to be false;

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Appropriation of part of landing-place.

16.—(1) (*a*) Subject to paragraph (*b*) below and notwithstanding anything in any enactment, the harbour company may set apart and appropriate the whole or part of the western side of the landing-place for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trades, persons, vessels or goods subject to the payment of such rates and subject to such terms, conditions and regulations as the harbour company may think fit.

(*b*) The rates payable in any case of the exercise of the powers of this section shall not be less than the sum of the ship, passenger and goods dues which would be payable for the time being in respect of the use of the part of the landing-place in question by the vessels, trades, persons or goods (or classes thereof) encompassed in the setting apart and appropriation.

(2) As soon as may be after in any case setting apart or appropriating a part of the landing-place under subsection (1) above, the harbour company shall give written notice to the city council specifying the part so set aside or appropriated and the vessels, trades, persons and goods entitled to use that part.

(3) No person or vessel shall make use of any part of the landing-place so set apart or appropriated without the consent of the harbour master and the harbour master may order any person or vessel making use thereof without such consent to be removed and the provisions of section 58 of the Harbours, Docks, and Piers Clauses Act 1847 shall extend and apply (with the necessary modifications) to any such vessel.

1847 c. 27.

Crown rights.

17.—(1) Nothing in this Act 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 herein contained shall authorise any person

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 of 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 subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

Saving rights of Queen's harbour master.

18. Nothing in this Act shall take away, alter, prejudice or affect the jurisdiction or any rights, powers, authorities or privileges of the Queen's harbour master.

Saving for Trinity House.

19. None of the provisions of this Act shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Saving for town and country planning.
S.I. 1977/289.
1971 c. 78.

20. Any development authorised by this Act shall not be deemed for the purposes of the Town and Country Planning General Development Order 1977 (or any general order superseding that order made under section 24 of the Town and Country Planning Act 1971, or any corresponding provision of an Act repealing that section), to be—

(*a*) development authorised by an Act which designates specifically both the nature of the development and the land upon which it may be carried out; or

(*b*) development by dock, pier or harbour undertakers or their lessees of operational land of the undertaking, being development which is required for the purpose of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers or goods at a dock, pier or harbour.

Saving for Coast Protection Act 1949.
1949 c. 74.

21. Nothing in this Act shall affect the application of any operation of sections 18 and 34 to 36 of the Coast Protection Act 1949 (which require the consent of the Secretary of State to certain operations and contain other provisions for the safety of navigation).

Saving for Health and Safety at Work etc. Act 1974.
1974 c. 37.

22. Subsection (1) of section 80 of the Health and Safety at Work etc. Act 1974 (repeal or modification of certain provisions by regulations) shall apply to any provision of this Act and to any byelaw made under this Act as that subsection applies to any provision mentioned in subsection (2) of that section and nothing in this Act shall prejudice or affect the operation of any of the relevant statutory provisions as defined in subsection (1) of section 53 of that Act.

Protective provisions.

23. The provisions of Schedule 2 to this Act shall have effect for protecting the interests of the persons therein specified.

Repeals.

24. The enactments specified in Schedule 3 to this Act (which include enactments that were obsolete or spent before the passing of this Act) are hereby repealed to the extent mentioned in the third column of that Schedule.

SCHEDULES

SCHEDULE 1

Section 3 (*f*).

INCREASE OF PENALTIES UNDER HARBOURS, DOCKS, AND PIERS CLAUSES ACT 1847

1847 c. 27.

Section (1)	Description of offence (2)	Old penalty or old maximum penalty (3)	New penalty or new maximum penalty (4)
Section 35	Failure of master to report arrival of a vessel.	£25	Level 3 on the standard scale.
Section 36	Failure of master to produce certificate of registry.	£50	Level 3 on the standard scale.
Section 53	Default by master in complying with direction of harbour master.	£50	Level 3 on the standard scale.
Section 55	Offering of bribes to officers and acceptance of bribes by officers.	£50	Level 3 on the standard scale.
Section 59	Failure to dismantle vessel.	£25	Level 3 on the standard scale.
Section 60	Failure to lower sails when entering dock.	£25	Level 3 on the standard scale.
Section 61	Failure to furnish or fix hawsers, etc. to moorings.	£25	Level 3 on the standard scale.
Section 62	Wilful cutting of moorings.	£25	Level 3 on the standard scale.
Section 64	Failure to remove vessel for purpose of enabling repair, etc. of harbour, etc.	£25	Level 3 on the standard scale.
Section 66	Failure to remove vessel after discharge of cargo.	£25	Level 3 on the standard scale.
Section 71	Commission of miscellaneous offences in relation to fires, combustible or explosive matter and firearms.	£25	Level 3 on the standard scale.
Section 72	Obstruction of harbour master while engaged in searching for, etc. fires or lights.	£25	Level 3 on the standard scale.
Section 73	Throwing of ballast, etc. into harbour.	£25	Level 3 on the standard scale.

Section 23.

SCHEDULE 2

PROTECTIVE PROVISIONS

PART I

FOR PROTECTION OF BRITISH RAILWAYS BOARD AND SEALINK U.K. LIMITED

For the protection of the British Railways Board and Sealink U.K. Limited (in this Part of this Schedule referred to respectively as "the board" and "Sealink") the following provisions shall, unless otherwise agreed in writing between the harbour company and the board or Sealink, as the case may be, apply and have effect:—

(1) In this Part of this Schedule—

"construction" includes execution and placing and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer to be appointed by the protected party;

"plans" includes sections, drawings, specifications and descriptions (including descriptions of methods of construction or operation);

"protected party" means—

(*a*) in relation to railway property, the board;

(*b*) in relation to Sealink's property, Sealink;

"protected property" means railway property or Sealink's property, as the case may be;

"railway property" means the Portsmouth Harbour station of the board and any railway and works connected therewith for the maintenance or operation of which the board are responsible and includes any land held or used by the board for the purposes of such station, railway or works;

"Sealink" includes any subsidiary (within the meaning of section 154 of the Companies Act 1948) of Sealink;

1948 c. 38.

"Sealink's property" means Portsmouth Harbour Railway Jetty and any works connected therewith for the maintenance or operation of which Sealink are responsible and includes any land held or used by Sealink for the purposes of the said jetty and works;

"specified work" means any work or operation authorised by sections 7 (Power for harbour company to maintain and improve landing-place), and 8 (Power to dredge) of this Act which may in any way affect protected property:

(2) The harbour company shall before commencing any specified work supply to the protected party proper and sufficient plans thereof for the reasonable approval of the

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engineer and shall not commence any specified work until plans thereof have been approved in writing by the engineer or settled by arbitration:

Provided that, if within 56 days after such plans have been furnished to the protected party the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same:

(3) If, within 56 days after such plans have been furnished to the protected party, the protected party shall give notice to the harbour company that the protected party desire themselves to construct any part of a specified work which in the opinion of the engineer will or may affect the operation of protected property, then, if the harbour company desire such part of that specified work to be constructed, the protected party shall construct the same with all reasonable dispatch on behalf of and to the reasonable satisfaction of the harbour company in accordance with the plans approved or deemed to be approved or settled as aforesaid:

(4) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works whether temporary or permanent which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of protected property and such protective works as may be reasonably necessary for those purposes shall be constructed by the protected party or by the harbour company, if the protected party so desire, with all reasonable dispatch and the harbour company shall not commence the construction of that specified work until the engineer shall have notified the harbour company that the protective works have been completed to his reasonable satisfaction:

(5) The harbour company shall give to the engineer not less than 28 days' notice in writing of their intention to commence the construction of a specified work and, except in emergency (when the harbour company shall give such notice as may be reasonably practicable), also of their intention to carry out any works for the repair or maintenance of a specified work:

(6) A specified work shall, when commenced, be carried out—

(*a*) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;

(*b*) under the supervision (if given) and to the reasonable satisfaction of the engineer; and

(*c*) in such manner—

(i) as not to cause any damage to protected property; and

SCH. 2
—*cont.*

(ii) as not to interfere with the free, uninterrupted and safe user of protected property or the traffic using the same and the use by passengers of protected property; and, if any damage to protected property or any such interference shall be caused or take place, the harbour company shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the protected party all expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference:

Provided that nothing in this paragraph shall impose any liability on the harbour company with respect to any damage, costs, expenses or loss which is attributable to the act, neglect or default of the protected party or their servants, contractors or agents:

(7) The harbour company shall at all times afford reasonable facilities to the engineer for access to a specified work during its construction and shall supply him with all such information as he may reasonably require with regard to any specified work or the method of construction thereof:

(8) The harbour company shall repay to the protected party all costs, charges and expenses reasonably incurred by the protected party—

(*a*) in constructing any part of a specified work on behalf of the harbour company as provided by paragraph (3) of this Part of this Schedule or in constructing any protective works under the provisions of paragraph (4) of this Part of this Schedule;

(*b*) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling protected property and for preventing as far as may be reasonably practicable all interference, obstruction, danger or accident arising from the construction, maintenance, repair or failure of a specified work;

(*c*) in respect of any special traffic working resulting from any substitution, suspension, diversion or cancellation of railway services of the board or shipping services of Sealink which may be necessary as a result of the construction, maintenance, repair or failure of a specified work;

(*d*) in respect of any additional temporary lighting of protected property in the vicinity of a specified work, being lighting made reasonably necessary as a result of a specified work or the failure thereof:

(9) If at any time the protected party shall give notice to the harbour company informing them that the state of repair of

SCH. 2 —*cont.*

the landing-place or, after it has been completed, of a specified work appears to be such as to affect prejudicially protected property, the harbour company shall, on receipt of such notice, take such steps as may be reasonably necessary to put the landing-place or that specified work, as the case may be, in such state of repair as not prejudicially to affect protected property:

(10) (*a*) If, during the construction of a specified work or of any temporary structures in connection therewith respectively or within 5 years after the completion of such works or after the removal of such temporary structures, any accumulation of silt or other material shall be created adjacent to Sealink's property in consequence of the construction of that specified work or those temporary structures which shall cause an impediment to free navigation in the area adjacent to Sealink's property, the harbour company, if so requested by Sealink within the period of 5 years after such completion, shall remove such accumulation of silt or other material, and, if the harbour company fail or refuse to do so, Sealink may recover from the harbour company the reasonable cost of any work which Sealink cause to be done for that purpose;

(*b*) Should any such accumulation arise within the said period of 5 years and be removed in accordance with the provisions of sub-paragraph (*a*) of this paragraph, then any recurrence of such accumulation shall from time to time be removed as aforesaid during a period of 10 years after the completion of that specified work or those temporary structures, as the case may be:

(11) The harbour company shall not cause or permit any vessels to berth, moor or make fast at the landing-place in such manner as to impede or obstruct access for vessels to and from Sealink's property:

(12) Notwithstanding anything contained in this Act the protected party may have access to and may use the landing-place, without being required to pay any charge or toll, for the purposes of—

(*a*) inspecting, maintaining, altering, improving, repairing, renewing, replacing or removing any protected property and for such purposes the protected party may moor vessels or floating pontoons at, and may erect temporary structures on, the landing-place:

Provided that—

(i) the protected party shall give to the harbour company not less than 56 days' notice in writing of their intention to exercise the powers of this paragraph, except for inspecting protected property or in emergency when they shall give such notice as may be reasonably practicable;

SCH. 2
—*cont.*

(ii) the protected party shall comply with all reasonable directions and requirements of the harbour company for the protection of the landing-place and for preserving the safe and uninterrupted access thereto, and user thereof, for persons on foot and for vessels;

(iii) all work to be undertaken by the protected party shall be carried out and completed with all reasonable dispatch and in such manner as not to cause any damage to the landing-place and any damage shall be made good by the protected party to the reasonable satisfaction of the harbour company;

(*b*) embarking and disembarking their employees and agents for the purposes of sub-paragraph (*a*) of this paragraph:

(13) The harbour company shall be responsible for and make good to the protected party all costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the protected party—

(*a*) by reason of a specified work or the failure thereof; or

(*b*) by reason of any act or omission of the harbour company or of any persons in their employ or of their contractors or others whilst engaged upon a specified work;

and the harbour company shall effectively indemnify and hold harmless the protected party from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the protected party on behalf of the harbour company or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the protected party or of any person in their employ or of their contractors or agents) excuse the harbour company from any liability under the provisions of this Part of this Schedule:

Provided that the protected party shall give to the harbour company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the harbour company:

(14) Any difference arising between the harbour company and the protected party under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

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—*cont.*

PART II

FOR PROTECTION OF PORTSMOUTH CITY COUNCIL

For the protection of Portsmouth City Council (in this Part of this Schedule referred to as "the city council") the following provisions shall, unless otherwise agreed in writing between the harbour company and the city council, apply and have effect:—

(1) The harbour company shall, before commencing any tidal works, supply to the city council proper and sufficient plans and sections of those works and shall give to the city council not less than 7 days' written notice of their intention to commence any of those works:

(2) (*a*) If, during the construction of a tidal work or of any temporary structure in connection therewith respectively or within 5 years after the completion of such works or after the removal of such temporary structures, it is agreed or, in default of agreement, determined by arbitration that any accumulation of silt or other materials has been created adjacent to the Common Hard in consequence of the construction of that work or those temporary structures which shall cause an impediment to free navigation in the area adjacent to the Common Hard, the harbour company, if so requested by the city council within the period of 5 years after such completion, shall remove such accumulation of silt or other material; and, if the harbour company fail or refuse to do so, the city council may recover from the harbour company the reasonable cost of any work which the city council cause to be done for that purpose;

(*b*) Should any such accumulation arise within the said period of 5 years and be removed in accordance with the provisions of sub-paragraph (*a*) of this paragraph, then any recurrence of such accumulation shall from time to time be removed as aforesaid during a period of 10 years after the completion of that tidal work or those temporary structures, as the case may be:

(3) Notwithstanding anything contained in this Act the city council may have access to and may use the landing-place without being required to pay any charge or toll but only for the purpose of inspecting the landing-place pursuant to the functions conferred on them by this Act:

(4) The harbour company being a subsidiary (within the meaning of section 154 of the Companies Act 1948) wholly-owned by the Portsmouth Harbour Ferry Company PLC, no sale or transfer of the equity share capital of the harbour company shall be effected without the written consent of the Secretary of State and subject to such conditions as he may impose in granting any such consent; and before in any case such consent is sought the harbour company shall give to the city council not less than 21 days' written notice of the intention in that behalf and of the persons to whom a sale or transfer is proposed:

1948 c. 38.

SCH. 2 —*cont.*

(5) The harbour company shall from time to time consult the city council (through or by such committee, sub-committee or panel as the city council from time to time nominate for the purposes of this paragraph)—

(*a*) not less than 56 days before in any case making, amending or revoking byelaws which the harbour company are empowered under or by virtue of any enactment to make;

(*b*) not less than 35 days before imposing or altering any charges in respect of the use of the landing-place;

and shall take into account any representations of the city council made in that behalf within that period:

(6) Any difference arising between the harbour company and the city council under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing given to the other) by the President of the Institution of Civil Engineers.

Section 24.

SCHEDULE 3

REPEALS

Chapter	Short title	Extent of repeal
9 & 10 Vict. c. cviii.	The Portsmouth Harbour Pier Act 1846.	The whole Act.
36 & 37 Vict. c. cxviii.	The Joint Portsmouth Railway Extension Act 1873.	Sections 10 (so far as it relates to the landing-place) and 26.
1963 c. xviii.	British Railways Act 1963.	Section 35.
1984 c. vii.	British Railways Act 1984.	Section 34.

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