S T A T U T O R Y I N S T R U M E N T S

1985 No. 1554

HARBOURS, DOCKS, PIERS AND FERRIES

The Langstone Harbour Revision Order 1985

Made - - - - -	20th *August* 1985
Coming into force - -	14th *October* 1985

The Secretary of State for Transport, in exercise of 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 Langstone Harbour Board and the Royal Yachting Association, hereby makes the following Order:-

Citation and commencement

1.-(1) This Order may be cited as the Langstone Harbour Revision Order 1985 and shall, unless subject to special parliamentary procedure, come into operation on 14th October 1985.

(2) The Langstone Harbour Order 1962**c** and this Order may be cited together as the Langstone Harbour Orders 1962 and 1985.

Interpretation

2.-(1) In this Order, unless the context otherwise requires, words and expressions to which meanings are assigned by the Langstone Harbour Order 1962 or by the enactments incorporated herewith have the same meanings; and

"the Act of 1847" means the Harbours, Docks, and Piers Clauses Act 1847**d**:

"harbour master" means the officer for the time being appointed by the Board for securing the observance of any byelaws made by the Board and to give directions under enabling powers contained in the Langstone Harbour Orders 1962 and 1985 and includes his duly authorised assistants;

"the Order of 1962" means the Langstone Harbour Order 1962;

"the Secretary of State" means the Secretary of State for Transport.

Amendment and Revocation

3.-(1) Section 4 (Interpretation) of the Order of 1962 is hereby amended as follows:

(a) for the definition of "hover vehicle" there shall be substituted- " 'hovercraft' has the same meaning as in the Hovercraft Act 1968**e**;"

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a 1964 c.40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraph 4(1) to (8).
b S.I. 1981/238.
c See 1962 c. xxxviii.
d 1847 c. 27

(b) in the definition of "vessel" for the words "hover vehicle" there shall be substituted the word "hovercraft";

(c) there shall be inserted the following definition:

" 'the Advisory Committee' means the Committee established under section 29 (Advisory Committee) of this Order.".

(2) Section 7(1) of the Order of 1962 is hereby amended by inserting after the words "this section" the following:

"save for the exclusion therefrom of Round Nap Island above the level of mean high water springs".

(3) Subsection (2) of section 34 of the Order of 1962 is hereby amended by inserting after the word "them" the words "by section 83 of the Act of 1847 or".

(4) Subsections (3) and (4) of section 34 of the Order of 1962 are hereby revoked.

Alteration of Constitution

4.-(1)The constitution of the Board shall be altered by the addition of two members elected by the Advisory Committee from among the members of that Committee

(2) Accordingly the Order of 1962 shall have effect subject to the following amendments:

(a) in section 8 (Incorporation of Board), for the word "twelve" there shall be substituted the word "fourteen";

(b) in section 9 (Constitution of Board), at the end of the section]there shall be inserted-

"Two members to be elected by the Advisory Committee established under section 29 of this Order from among the members thereof.".

(3) In section 10(Election of members) of e Order of 1962 there shall be added the following subsection-

"(3)(a) The first election of members of the Board by the Advisory Committee shall be made as soon as may be after the coming into operation of the Langstone Harbour Revision Order 1985 and the members so elected shall, subject toe the provisions of this Order, hold office on and from the day of their election, until the day of the next annual meeting of the Board.

(b) The Advisory Committee shall, in 1986 and in each year thereafter at a meeting held not less than three and not more than ten days before the annual meeting of the Board in that year, elect the two members of the Board whom they are by this Order authorised to elect, and the members so elected shall, subject to the provisions of this Order, hold office on and from the day of the said annual meeting until the day of the next following annual meeting of the Board."

(4) Without prejudice to the construction of any reference in the Order of 1962 to the members of the Board as including the members elected by the Advisory Committee the following section of the Order of 1962 shall, with the necessary modifications, apply and have effect in relation to members of the Board elected by the Advisory Committee:

Section 11 (Provisions where failure to elect members occurs);

Section 12 (No person to be a member of Board on behalf of both of the Councils);

Section 13 (Disqualification on ceasing to be a member of either of the Councils);

Section 14 (Vacation of office by failure to attend meetings);

Section 15 (Resignation of member of the Board);

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e 1968 c.c59.

Section 16 (Outgoing members eligible for re-election);

Section 17 (Occasional vacancies);

Section 18 (Election of members to be certified to Board); and

Section 21 (Error omission etc. not to invalidate any act of Board).

Advisory Committee

5. The constitution of the Advisory Committee established under section 29 (Advisory Committee) of the Order of 1962 shall be altered, and accordingly the following provisions of this article shall have effect in place of the said section 29 which is hereby repealed:

29.-(1) There shall be established in accordance with the provisions of this section an Advisory Committee consisting of representatives appointed by the following bodies:

Portsmouth and Langstone ailing Association-

4 representatives nominated by sailing clubs using the harbour, no such club being entitled to nominate more than one representative;

Royal Yachting Association-

1 representative;

Nature Conservancy Council-

1 representative

Hampshire and Isle of Wight Naturalists' Trust Limited-

1 representative

Langstone and District Wildfowlers' and Conservation Association-

1 representative

Portsmouth and District Natural History Society-

1 representative

Local Fisheries Committee for Southern Sea fisheries District-

1 representative

Langstone Harbour Fishermen's Association-

1 representative

Any additional body or bodies, not exceeding five in number, which may be nominated by the Board with the agreement of the Advisory Committee-

For each such additional body,

1 representative

(2) If it appears to the Board in the case of any of the appointments referred to in subsection (1) of this section that the body by whom the appointment is to be made has refused or failed to appoint a member after being requested by the Board to do so, or if the body by whom any of the said appointments is to be made has ceased to have an identifiable existence, the appointment in question shall be made by the Board after consultation with the Advisory Committee to be representative of the interests represented, or formerly represented, by the appointing body specified in the said subsection (1) as the Board consider appropriate.

(3) A member of the Advisory Committee shall remain a member of the Committee for so long as the body appointing him shall think fit:

Provided that any member may resign his office at an time on giving notice in writing to such body.

(4) The Board shall, except in a case of special urgency where it is not reasonably practicable so to do, consult the Advisory Committee on all matters substantially affecting the preservation protection, regulation, management, maintenance and improvement of the harbour and the navigation thereof, and particularly, but without prejudice to the generality of the foregoing, on every proposal-

(a) to impose or vary any rates or charges; or

(b) to dredge, lay down moorings in, or change any navigational mark, light or channel of , the harbour; or

(c) to make byelaws.

(5) The Board shall take into consideration any matter which relates to the preservation, protection, regulation, management, maintenance and improvement of the harbour and the navigation thereof and is from time to time referred to them by the Advisory Committee whether or not that committee has been consulted on the matter so referred.

(6) The Board shall defray such reasonable expenses as may be incurred by the Advisory Committee or any member thereof in connection with the provision of secretarial services for the Advisory Committee.".

Incorporation of Harbours Docks, and Piers Clauses Act 1847

6.-(1) The Act of 1847, except sections 6 to 27, 31, 37 to 42, 47 to 50, 59, 60, 66, 79, 80, 81, 82, 84, to 98 and 101, shall subject to the following provisions of this article and articles 9 to 11 (Directions of harbour master) of this Order be incorporated with this Order.

(2) For the purposes of the incorporation of any provision of the Act of 1847 and in the application of any provision of the Act of 1847 to the Board and the undertaking-

(a) the expression "special Act" shall include that enactment;

(b) the expression "prescribed limits" shall mean the limits of the harbour;

(c) the expression "harbour" shall mean the harbour as defined in section 4 of the Order of 1962;

(d) the expression "undertakers" shall mean the Board;

(e) the expression "vessel" shall have the same meaning as in the Order of 1962.

(3) The provisions of the Act of 1847 incorporated in accordance with paragraphs (1) and (2) of this article shall supersede the provisions of the Act of 1847 incorporated with the Order of 1962 by virtue of section 19 of the General Pier and Harbour Act, 1861, Amendment Act 1862**f**; and section 6 (Application of Harbours Docks, and Piers Clauses Act 1847) of the Order of 1962 is hereby repealed.

Byelaws

7. Subsections (3) to (8) and (11) of section 236 and section 238 of the Local Government Act 1972**g** (which relate to the procedure for making, and evidence of, byelaws) shall apply to any

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f 1862 c. 19.
g 1972 c. 70.

byelaws made by the Board as if the Board were a local authority and the clerk to the Board were the proper officer of a local authority but the secretary of State may confirm the byelaws with such modifications as he thinks fit:

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

General Powers of Board

8.-(1) The Board may from time to time carry out such works or operations as they may consider necessary for the maintenance, operation and improvement of the harbour but nothing in this paragraph shall authorise the Board to carry out works or operations on any land without the consent of the owner and occupier thereof or so as to affect adversely any existing right of navigation in the harbour.

(2) Nothing in paragraph (1) of this article shall affect the powers of the Board under sectin 30 (Powers as to moorings etc.) of the Order of 1962.

(3) In section 43(1) and (2) (Application of revenue) of the Order of 1962 the words “except borrowed money” in both places where those words occur shall be omitted.

Directions of harbour master

9. Section 52 of the Act of 1847 in its application to the Board and the harbour master shall extend to empower the harbour master to give directions prohibiting the mooing or anchoring of vessels in any particular part or parts of the harbour.

Provided that no such direction shall prohibit the lawful mooring of a vessel at a mooring or buoy or like apparatus or convenience provided or licensed by the Board under section 30 (Powers as to moorings etc.) of the Order of 1962.

10. Section 52 of the Act of 1847 in its application to the Board and the harbour master shall not be construed to require the harbour master in emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section but in pursuance of that section, for all or any of the purposes thereof, the harbour master shall be entitled in emergency to give general directions applicable to all vessels or to any particular class or classes of vessels.

11. Section 53 of the Act of 1847 in its application to the Board and the harbour master shall not be construed to require the harbour master to serve a notice in writing of his directions upon the master of a vessel and such directions may be given orally, or otherwise communicated to the master, on any occasion when it is not reasonably practicable for a written notice to be served on the master.

Charges

12. Charges payable to the Board as a harbour authority shall be so payable subject to such conditions as the Board may from time to time specify in their published list of charges, including any condition that charges or particular charges shall be deemed not to have been paid unless there is affixed to such part of the vessel in respect of which the charge has been remitted as may be so specified such mark or notice as may be supplied by the Board as evidence of payment.

13.-(1) the several charges which the Board are for the time being authorised to demand, take and recover in respect of vessels and goods under any enactment shall be payable before the removal from the harbour of any vessel or goods therein in respect of which they are payable.

(2) Charges payable to the Board shall be payable by the owner or master of any vessel or (as the case may be) the owner of any goods in relation to which the charges are payable.

(3) Where charges payable to the board may be recovered by them from more than one person, the said person shall be jointly and severally liable.

14. In addition to any other remedy given by this Order and by the Act of 1847, as incorporated by this Order, and whether the demand required by section 44 of the Act of 1847 has been made or not, the board may recover any charges payable to them as a debt in any court of competent jurisdiction.

Information

15. Any duly authorised officer of the Board may require the master of any vessel or person in charge of a houseboat seeking access to the harbour or on any vessel or houseboat using the harbour to produce for inspection by such officer any pass or other authority which may have been issued to him by, or on behalf of, the Board and any person who fails to comply with any such requirement without reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding £200.

Houseboats

16.-(1) As from the first day of the third month after the expiry of the month in which this Order comes into operation it shall not be lawful without the written consent of the Board (which may be given for such period and on such terms or conditions and subject to compliance with such requirements as the Board think fit), to moor, place, keep or maintain in the harbour any houseboat, whether or not the same shall have been so moored or placed before the coming into operation of this Order:

Provided that-

(a) as respects any houseboat so moored or placed immediately before the date of the coming into operation of this Order until the expiration of five years from that date such consent shall not be withheld unless the Board are satisfied that the mooring, placing, keeping or maintaining of the houseboat would constitute a danger to or interfere with the navigation of vessels in the harbour or obstruct access to any harbour installation or tidal work and the Board shall on refusal of any such consent under this article specify in writing the ground or grounds for such refusal;

(b) nothing in this paragraph shall prejudice or affect any obligation existing under any Act to obtain the consent of the port health authority for the harbour or of any local authority within whose area the houseboat is or is proposed to be moored, placed, kept or maintained to such mooring, placing, keeping or maintaining.

(2)(a) If any houseboat shall be moored, placed, kept or maintained contrary to the provisions of paragraph (1) of this article the Board may, by notice in writing to be served in the manner hereinafter provided, require the person having the control of the houseboat to remove it out of the harbour within such period, not being less than sixty days from the service of the notice, as they may specify in the notice.

(b) Any such notice shall be served by leaving it with, or sending it in a prepaid letter addressed to, the person having the control of such houseboat at his usual or last known residence or (if it is not practicable after reasonable inquiry to ascertain the name and address

of such person) by posting the same in a conspicuous position on such houseboat or on the land or foreshore near to such houseboat.

(3) (a) If any person without reasonable cause fails to comply with any notice given by the Board under the provisions of paragraph (2) of this article, he shall be liable on summary conviction to a fine not exceeding £200, and the board may at any time after the expiration of the period specified in such notice remove the houseboat referred to in the notice or, if the person having the control of the houseboat so elects, the Board may demolish it and remove any rubbish or other material resulting from the demolition.

(b) Subject as is provided in paragraph (5) of this article the costs and expenses reasonably incurred by the Board in, or in connection with, any such removal or demolition may be recovered by the Board as a simple contract debt in any court of competent jurisdiction from the person having the control of such houseboat.

(4) For the purposes of paragraphs (2) and (3) of this article the owner of any houseboat shall, until the contrary be proved, be deemed to be the person having the control thereof.

(5) (a) Where any houseboat shall have been removed by the Board as aforesaid, the board may retain the same or the materials thereof and may, and shall if so required by the owner, sell or dispose of the same or of such materials and, subject as hereinafter provided, retain the proceeds of such sale or disposal.

(b) For the purpose of ascertaining the amount recoverable by the Board under paragraph (3)(b) of this article in respect of the costs and expenses incurred by them in, or in connection with, the removal of any such houseboat, credit shall be given for the net amount (if any) received by the Board of the proceeds of the sale) after deduction of any costs and expenses incurred by the Board in effecting the same) of the houseboat or the materials thereof, and if such net amount shall exceed the amount of the costs and expenses incurred by the Board in or in connection with, such removal as aforesaid they shall pay the amount of such excess to the owner of the houseboat.

(6) Nothing in this article shall be deemed to confer on the Board any right, title or interest in or to any land (not for the time being belonging to the Board) forming part of the bed or foreshore of the harbour.

(7) The provision of paragraph (1) of this article shall not apply to:

(a) any houseboat for which the Board have granted a licence under section 30(4) (Powers as to moorings etc.) of the Order of 1962 to any person to place, lay down, maintain, use or have a mooring, buoy or like apparatus or convenience, or

(b) any houseboat which is moored from time to time at one of the eight houseboat berths on land which was owned by the Hayling Health Society on 1st November 1983.

17.-(1) Any person aggrieved by any refusal of consent or any requirement of the Board as respects a houseboat under article 16 (Houseboats) of this Order may appeal to the Secretary of State.

(2) The time within which any such appeal may be brought shall be 21 days from the date on which notice of the refusal or requirement was given to the person desiring the appeal.

(3) When application is made to the Board for consent to moor, place, keep or maintain any houseboat in the harbour then, unless within two months from the date on which the Board receive such application, or within such extended period as may at any time be agreed upon in writing between the applicant and the Board, the Board give written notice to the applicant of their decision on the application, the provisions of this article shall apply in relation to the application as if the consent to which it relates had been refused by the Board and as if

notification of their decision had been received by the applicant at the end of the said period of two months or at the end of the said extended period, as the case may be.

(4) On the hearing of an appeal as respects a houseboat the Secretary of State may dismiss or allow the appeal or may vary the terms, conditions or requirements of any consent appealed against by substituting therefor any terms, conditions or requirements which the Board could have prescribed or made under the Langstone Harbour Orders 1962 and 1985 or may extend the time specified in a requirement appealed against and in deciding to vary the terms, conditions or requirements of any consent the Secretary of State shall not impose any varied terms, conditions, or requirements which are more onerous than those previously imposed by the board.

(5) In any case in which such an appeal lies, the document notifying the refusal or requirement in the matter shall state the right of appeal to the Secretary of State and the time within which such an appeal may be brought.

(6) Where any refusal or requirement against which a right of appeal is conferred by this article becomes the subject of an appeal, no proceedings shall be brought or taken under paragraph (3) of the said article 16 until the appeal has been disposed of or withdrawn or fails for non-prosecution thereof.

(7) Where the Secretary of State allows an appeal under this article effect shall be given to the order of the Secretary of State and in particular any necessary consent shall be granted.

18.-(1) The Board shall forthwith after the coming into operation of this Order cause public notice to be given of the effect of articles 16 and 17 of this Order by advertisement in one or more local newspapers published or circulating in the City of Portsmouth and the Borough of Havant and otherwise in such manner as the Board think fit.

(2) Either-

(a) a copy of any such newspaper containing any such notice; or

(b) a photostatic or other reproduction certified by the Clerk of the Board to be a true reproduction of a page or part of a page, or any such newspaper bearing the date of its publication and containing such notice;

shall be evidence of the publication of the notice and of the date of the publication.

Section 31 of the Order of 1962

19. In section 31(c) (Penalty for obstructing works etc.) of the Order of 1962 the words “anchored or” shall be omitted.

Increase of Penalties

20.-(1) In section 31 (Penalty for obstructing works etc.) of the Order of 1962, for “five pounds” there shall be substituted “£200, and in the case of continuing offence a further fine not exceeding £20 for each day during which the offence continues after conviction thereof, subject to a maximum fine of £500”.

(2) In section 34(2) (Byelaws) of the Order of 1962, for “five pounds” there shall be substituted “£200 and in the case of a continuing offence a further fine not exceeding £20 for each day during which the offence continues after conviction thereof, subject to a maximum fine of £200”.

Crown rights

21. Nothing on this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular nothing herein contained authorises the Board to take use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land hereditaments, subjects or rights of whatsoever description 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 on behalf of Her Majesty, first had and obtained for that purpose.

Costs of Order

22. All costs, charges and expenses of, or in connection with, the preparation, submission and making of this Order (other than costs, charges and expenses which any person is lawfully ordered to pay by the Secretary of State or a joint committee of both Houses of Parliament, or any costs, charges and expenses incurred in opposing the Order) shall be paid by the Board.

20th August 1985

EXPLANATORYNOTE

(This Note is not part of the Order.)

This Order alters the constitution of the Langstone Harbour Board by providing for the addition of two members to be elected by the Advisory Committee. The constitution of that Committee is also changed, and further provision is made for consultation by the Board.

Amendments are made to the powers of the Harbour Board, particularly in relation to houseboats. Penalties for certain offences are increased.