



Weymouth and Portland Water Sports Act 1974

CHAPTER xxvi

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ELIZABETH II



1974 CHAPTER xxvi

An Act to empower the Weymouth and Portland Borough Council to provide facilities for water sports; and for other purposes. [31st July 1974]

WHEREAS—

(1) The borough of Weymouth and Portland (in this Act referred to as “ the borough ”) in the county of Dorset is under the local government of the Weymouth and Portland Borough Council (hereinafter referred to as “ the Council ”):

(2) It is expedient to confer upon the Council powers to provide facilities for water sports:

(3) It is expedient that the other provisions contained in this Act be enacted:

(4) The purposes of this Act cannot be effected without the authority of Parliament:

1933 c. 51. (5) In relation to the promotion of the Bill for this Act the requirements of Part XIII of the Local Government Act 1933 have been observed by the mayor, aldermen and burgesses of the borough of Weymouth and Melcombe Regis, many of whose functions were transferred to the Council by the Local Government Act 1972:

1972 c. 70.

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:—

Short title. 1. This Act may be cited as the *Weymouth and Portland Water Sports Act 1974*.

Interpretation. 2.—(1) In this Act, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

“boating centres” includes yacht basins, marinas, breakwaters, embankments, quays, wharves, landing places, groynes, sea defences, slipways, locks, bridges and jetties whether constructed on lands below or above the level of mean high-water springs;

“the borough” means the borough of Weymouth and Portland;

“the Council” means the council of the borough;

“enactment” means any enactment, whether public general or local, and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“land” includes land covered by water and any interest in land or any easement or right in, to or over land;

“sea” includes the waters of any channel, creek, bay or estuary and of any river so far up that river as the tide flows;

“seashore” means the bed and shore of the sea, and of every channel, creek, bay or estuary, and of every river so far up that river as the tide flows, and any cliff, bank, barrier, dune, beach, flat or other land adjacent to the shore;

“vessel” includes every description of vessel used in navigation and a hovercraft (as defined in the Hovercraft Act 1968);

“waterway” means any lake, river, canal or other waters being (in any case) waters suitable, or which can be rendered suitable, for sailing, boating, bathing or fishing.

(2) Unless the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by or by virtue of any enactment, including this Act.

3.—(1) In its application to the Council, the Physical Training and Recreation Act 1937 shall have effect as if in subsection (1) of section 4 of that Act to the purposes, therein mentioned, of gymnasiums, playing fields, holiday camps or camping sites, there were added the purpose of boating centres; and as if to the purposes, also therein mentioned, of centres for the use of clubs, societies or organisations having athletic, social or educational objects there were added the purpose of centres for like bodies having boating objects.

Power to provide boating centres. 1937 c. 46.

(2) Subject to the provisions of this Act the powers of the Council under the Physical Training and Recreation Act 1937, as extended by subsection (1) of this section, shall include the power to provide (for and in connection with boating centres) moorings, buoys, navigation marks, starting boxes, and other works, machinery, apparatus or conveniences whether constructed on lands below or above the level of mean high-water springs:

Provided that before the Council exercise their power to provide buoys and navigation marks they shall consult with and obtain the approval of the Corporation of Trinity House of Deptford Strond.

4.—(1) Without prejudice to the generality of the foregoing provisions of this Act, where a boating centre comprises any waterway the Council may provide facilities and services for open air recreation including sailing, boating, bathing and fishing within the centre.

Provisions as to waterways.

(2) If a boating centre is bounded by the sea, or by any waterway which is not part of the sea, the Council shall have power to carry out such works and do such other things as may appear to them necessary or expedient for facilitating the use of the sea or other waters so adjoining the boating centre by the public for sailing, boating, bathing and fishing and other forms of recreation.

(3) The powers conferred by subsections (1) and (2) of this section include power to erect buildings or carry out works on land adjoining the sea or other waters but outside the boating centre and to construct jetties or other works wholly or partly in the sea or other waters.

Exercise of powers.

5.—(1) The powers conferred by the foregoing provisions of this Act for the construction of boating centres and of buildings, accommodation, works and facilities connected therewith, shall be operative notwithstanding any interference with public rights of navigation or other public or customary rights (other than any right to use a highway).

(2) The powers conferred by the foregoing provisions of this Act may be exercised by the Council—

(a) on land belonging to them; or

(b) on such terms as may be agreed with the owners and any other persons whose authority is required for the purpose, on other land;

and an agreement under paragraph (b) of this subsection may provide for the making by the Council of payments in consideration of the making of the agreement and payments by way of contribution towards expenditure incurred by the persons making the agreement in consequence thereof.

(3) (a) The powers conferred by the foregoing provisions of this Act shall not be exercised except within the borough or in the sea or on the seashore.

(b) The Council shall not under the powers of this Act construct a boating centre at a distance of more than 1,500 metres measured in a seaward direction from the nearest point on the seaward boundary of the district:

Provided that nothing in this paragraph shall restrict the powers of the Council under subsection (2) of section 3 (Power to provide boating centres) of this Act.

(4) (a) The Council before acting under the foregoing provisions of this Act or under the provisions of section 6 (Power to dredge) of this Act shall consult with, and seek the consent of, any harbour authority or water authority having functions relating to the sea or other waters in question, and of such other authorities, being authorities which under any enactment have functions relating to the sea or other waters in question, as the Secretary of State may either generally or in any particular case direct.

(b) If any authority consulted in accordance with paragraph (a) of this subsection withhold their consent to the proposals about which they are consulted, the proposals shall not be proceeded with unless, on an application in that behalf specifying the proposals and the grounds for withholding consent, the Secretary of State so directs, and subject to any conditions or modifications specified in the direction.

(c) Before giving a direction under paragraph (b) of this subsection the Secretary of State shall afford to the objecting authority and the Council an opportunity of being heard by a person appointed by him for the purpose, and shall consider that person's report.

6.—(1) Subject to the provisions of this Act, and in particular Power to section 11 (Crown rights) thereof, the Council may, for the dredge. purpose of constructing and maintaining boating centres pursuant to this Act and of affording channels and approaches thereto, deepen, dredge, scour, cleanse, alter and improve the seashore and may use, appropriate or dispose of the materials other than wreck within the meaning of Part IX of the Merchant Shipping Act 1894 from time to time dredged by them: 1894 c. 60.

Provided that no materials so dredged by them shall be deposited below the level of mean high-water springs except in such places and in accordance with such restrictions or regulations as may be approved or prescribed by the Secretary of State.

(2) In the exercise of the powers conferred by subsection (1) of this section the Council shall not interfere unreasonably with, damage or injuriously affect any bridge or railway works of the British Railways Board (in this section called “the railways board”).

(3) Before exercising the said powers within a distance of 15 metres of any bridge or railway works of the railways board the Council shall give to the railways board not less than twenty-eight days’ notice in writing of their intention to do so and shall furnish to the railways board full particulars relating thereto and the Council shall not exercise such powers until the railways board have approved such particulars:

Provided that—

- (i) the approval of the railways board shall not be unreasonably withheld;
- (ii) such approval shall be deemed to have been given if the railways board have neither approved nor disapproved such particulars within twenty-eight days of their having been furnished;

and any question whether the approval of the railways board has been unreasonably withheld shall be referred to and determined by arbitration.

(4) (a) As early as practicable, and in any event not less than twenty-eight days, before any exercise of their powers under this section within a distance of 50 metres of any subaqueous cable belonging to or used by the Post Office the Council shall give notice in writing to the Post Office of such intended exercise.

(b) No materials dredged in the exercise of the powers of this section shall be laid down or deposited in any place or manner so as to cover any subaqueous cable belonging to or used by the Post Office or to impede in any way the inspection, maintenance, removal or renewal of any such cable.

Byelaws.

7.—(1) The Council may make byelaws for regulating or controlling the use of boating centres provided under the powers of this Act and of works carried out pursuant to this Act and of any facilities or services provided in connection with the works and for prohibiting or restricting traffic of any description on any expanse of water in a boating centre and for prohibiting or restricting the entry of vessels into a boating centre.

(2) Without prejudice to the generality of the foregoing provisions of this section, byelaws under this section may be made for all or any of the following purposes:—

- (a) for prescribing rules of navigation and imposing speed limits in a boating centre;
- (b) for regulating or prohibiting the mooring, launching or keeping of vessels in a boating centre;
- (c) for regulating or prohibiting the placing, maintaining or use of moorings in a boating centre;
- (d) for the removal of obstructions in a boating centre;
- (e) for requiring the use of effectual silencers on vessels propelled by internal combustion engines in a boating centre, and prescribing rules with a view to imposing limits on the noise or vibration which may be caused by any such vessel;
- (f) for prohibiting the use of vessels which are not for the time being registered with the Council in such manner as the byelaws may provide;
- (g) for authorising the making of reasonable charges in respect of the registration of vessels in pursuance of the byelaws;
- (h) for securing the good and orderly conduct of persons in vessels or otherwise in a boating centre;
- (i) for regulating or preventing the use of firearms in a boating centre;
- (j) for the prevention of nuisances and offences against decency in a boating centre;
- (k) for securing the safety of vessels and persons using, and of property in, a boating centre;
- (l) for regulating the removal or disposal of rubbish (including ballast, earth, clay or other refuse) and sewage from vessels in a boating centre;
- (m) for the prevention of the disposal of such rubbish and sewage as aforesaid in a boating centre.

(3) Byelaws under this section may make different provision for different circumstances, and in particular may impose different restrictions in different parts of the water or land to which the byelaws apply and at different times or seasons.

(4) Byelaws under this section shall not be made so as to extinguish any public right of way over any waters, but, except as otherwise expressly provided, any byelaws under this section shall apply to persons exercising any such public right of way as they apply to other persons.

(5) Byelaws under this section—

(a) shall be of no effect if and in so far as inconsistent with any rules under the Merchant Shipping Act 1894 which are in force as respects the water to which the byelaws apply; 1894 c. 60.

(b) shall not interfere with any functions relating to the water or land to which the byelaws apply which are exercisable by any authority under any enactment.

(6) This section shall not apply to any water owned or managed by a water authority.

(7) As respects byelaws made under this section the confirming authority for the purpose of section 236 of the Local Government Act 1972 shall be the Secretary of State. 1972 c. 70.

8. Section 265 of the Public Health Act 1875 shall apply to the Council as if any reference in that section to the said Act of 1875 included a reference to this Act, and as if references in that section to a member of a local authority included reference to a member of a committee or a sub-committee of the Council. Protection of members and officers from personal liability. 1875 c. 55.

9.—(1) The Secretary of State may cause such local inquiries to be held as he may consider necessary for the purposes of any of his functions under this Act. Local inquiries.

(2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 shall apply in relation to any such inquiry.

10. Where under this Act any question or difference is to be referred to or determined by an arbitrator or arbitration then, unless other provision is made, the reference shall be to a single arbitrator to be appointed by agreement between the parties, or, in default of agreement, to be appointed by the President of the Institution of Civil Engineers on the application of any party to the dispute (after notice in writing to the others of them). Arbitration.

Crown
rights.

11. Nothing in this Act shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Act shall authorise the Council to take, use or in any manner interfere with any land or hereditaments or any rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners or 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 those commissioners on behalf of Her Majesty or, as the case may be, the consent in writing of that government department first had and obtained for that purpose.

For protection
of certain
statutory
undertakers.

12. For the protection of the undertakers the following provisions shall, unless otherwise agreed in writing between the Council and the undertakers, apply and have effect:—

(1) In this section unless the subject or context otherwise requires—

“ apparatus ” means—

(a) mains, pipes or other apparatus belonging to or maintained by the British Gas Corporation;

(b) electric lines or works (as respectively defined in the Electric Lighting Act 1882) belonging to or maintained by the Central Electricity Generating Board or the Southern Electricity Board;

and includes any works for the lodging therein of apparatus;

“ in ” in a context referring to apparatus includes under, over, across, along or upon;

“ operational land ” means land which is used by the undertakers for the purpose of the carrying on of their undertaking and land in which an interest is held for that purpose, not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings;

“ the undertakers ” means the British Gas Corporation, the Central Electricity Generating Board and the Southern Electricity Board, or any of them, as the case may be:

- (2) Nothing in the following sections of this Act shall relieve the Council or any person acting with the consent of or on the requirement of the Council from liability for damage caused by them or him to any apparatus in the exercise of the powers of the said sections, and the said powers shall so far as is reasonably practicable, be so exercised as not to obstruct or render inconvenient the access to any apparatus or operational land:—

Section 3 (Power to provide boating centres);

Section 4 (Provisions as to waterways):

- (3) (a) Not less than twenty-eight days before commencing the construction of any boating centre or works, buildings, accommodation or facilities connected therewith in exercise of the powers of the said sections 3 and 4 or any work of deepening, dredging, scouring, cleansing, altering or improving the seashore in exercise of the powers of section 6 (Power to dredge) of this Act within 50 metres of any apparatus, the Council shall submit to the undertakers particulars of the proposed construction or work, as the case may be, and furnish them with such particulars with respect thereto as the undertakers may reasonably require;
- (b) In the exercise of the powers of the said sections 3 and 4 the Council shall not, except with the written consent of the undertakers, interfere with, damage or injuriously affect any apparatus nor shall any materials dredged up in the exercise of the powers of the said section 6 be deposited in such place or manner as to cover any such apparatus or to impede any work of or connected with the inspection or repair of any such apparatus, without the consent of the undertakers:

Provided that—

(i) the consent of the undertakers shall not in any case arising under this sub-paragraph be unreasonably withheld;

(ii) such consent shall be deemed to have been given if the undertakers have not, within twenty-eight days of the making of any written application for such consent, refused such consent; and

(iii) nothing in this sub-paragraph shall impose any liability on the Council with respect to damage to any apparatus unless it be shown that the Council knew or ought reasonably to have known of the presence and positioning of that apparatus:

- (4) (a) Any question or difference arising between the Council and the undertakers under this section shall be determined by arbitration;

- (b) In settling any difference under this section the arbitrator shall have regard to any duty or obligation which the undertakers may be under in respect of any apparatus and may, if he thinks fit, require the Council to execute any temporary or other works so as to avoid so far as may be reasonably possible any interference with any purpose for which the apparatus is used.

For protection
of Bath and
Portland Group
and others.

13. For the protection of the Bath and Portland Group Limited, Kingston Minerals Limited, The Stone Firms Limited and Soil Fertility Dunns Limited (hereafter in this section referred to as "the companies") the following provisions shall, except as may be otherwise agreed in writing between the companies and the Council, apply and have effect:—

- (1) In this section "the protected works" means the wharves known as Crown Wharves Numbers 1 to 5 and the landing stage thereto at Castletown in the Island of Portland operated by the companies under a lease between the Crown Estate Commissioners and Kingston Minerals Limited dated 10th March 1969:
- (2) For the purposes of this section, any agreement or consent given by the companies shall be sufficiently authenticated if it is signified by the Secretary to the Bath and Portland Group Limited:
- (3) The Council shall not, under the powers of this Act, acquire compulsorily any interest in the protected works:
- (4) (a) Before exercising any of the powers of the sections of this Act specified in sub-paragraph (c) of this paragraph within a distance of 500 metres from the protected works, the Council shall consult the Bath and Portland Group Limited and shall furnish to them plans, sections and particulars of any works (including dredging), to be constructed or provided in pursuance of those powers within that distance:
 - (b) The Council shall not without the consent of the companies exercise the powers of the sections specified in the said sub-paragraph (c) within a distance of 500 metres from the protected works in such manner as will prevent or substantially impede the operation or use of the protected works but such consent shall not be unreasonably withheld:
 - (c) The sections of this Act to which this paragraph applies are—
 - Section 3 (Power to provide boating centres)
 - Section 4 (Provisions as to waterways);
 - Section 6 (Power to dredge):

- (5) Byelaws under section 7 (Byelaws) of this Act shall not apply to vessels exceeding 200 tons gross whilst using, approaching or leaving the protected works:
- (6) Any difference or dispute arising between the companies and the Council under this section (other than a difference or dispute as to the meaning or effect thereof) shall be determined by arbitration and such determination may be given subject to such conditions, if any, as the arbitrator may impose.

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

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

15. Nothing in this Act shall exempt the Council from the provisions of sections 9 and 10 of the Harbours Act 1964.

Saving for
Harbours
Act 1964.
1964 c. 40.

16. Section 289 of the Town and Country Planning Act 1971 (which for the avoidance of doubt declares that the provisions of that Act and any restrictions or powers thereby imposed or conferred in relation to land apply to land notwithstanding that provision is made by any local Act passed before or during the session 10 & 11 Geo. 6 for authorisation or regulation of development of the land) shall apply to this Act as if it had been passed during that session; and accordingly the said Act of 1971 and orders, regulations, rules, schemes and directions made or given thereunder shall apply to development authorised by this Act.

Saving for
Town and
Country
Planning
Act 1971.
1971 c. 78.

17. Nothing in this Act shall affect the restrictions imposed by the Dumping at Sea Act 1974.

Saving for
Dumping at
Sea Act 1974.
1974 c. 20.

18.—(1) The costs, charges and expenses preliminary to and of and incidental to the applying for and the preparing, obtaining and passing of this Act shall be paid by the Council, and the Council shall have power without the consent of any sanctioning authority to borrow the sum required for the payment thereof and shall repay the sum so borrowed within such period as they may determine not exceeding ten years from the date of borrowing.

Costs of
Act.

(2) The provisions of Part I of Schedule 13 to the Local Government Act 1972 so far as they are not inconsistent with this Act shall extend and apply to money borrowed under this section as if it were borrowed under the said Part I and the period fixed under this section for the repayment of the money borrowed shall as respects that money be the fixed period for the purpose of the said Part I.

1972 c. 70.

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