

Serial Number 1940/128.



THE FORESHORE LICENSE REGULATIONS 1940.

GALWAY, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 12th day of June, 1940.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Harbours Act, 1923, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

PRELIMINARY.

1. These regulations may be cited as the Foreshore License Regulations 1940.

2. In these regulations and in any license (as herein defined) to which these regulations apply, unless inconsistent with the context,—

“Foreshore” means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides :

“License” includes any license hereafter granted by the Governor-General in Council pursuant to section 156 of the Harbours Act, 1923 :

“Licensee” means the person or persons or corporate body or bodies to whom or to which any license is granted pursuant to ~~section 156 of the Harbours Act, 1923~~, and includes the executors, administrators, successors, and assigns of a licensee and, where a license is granted to or for the time being vested in more than one person, includes each and every one of such persons :

“Low-water mark” means low-water mark at ordinary spring tides :

“Minister” means the Minister of Marine, and includes any officer, person, or authority acting by or under the direction of the Minister, and includes also any member of the Executive Council acting for or, if the office is vacant, in the place of such Minister :

“Structure” includes all buildings, enclosures, fences, sheds, landing-places, wharves, and other erections of whatever nature and whatever material at any time during the continuance of any license affixed to, arresting on the soil, or floating in the water the erection, use, or maintenance of which is authorized by the license.

3. The provisions of these regulations shall apply to every license hereafter issued, except so far as expressly negatived or modified or inconsistent with the express provisions of such license.

PREMISES.

4. The rights, powers, and privileges conferred by any license shall extend and apply only to the part of the foreshore and land below low-water mark adjacent thereto necessary for the maintenance of the structures mentioned in the license at the site shown on the plan referred to in the license.

TERM.

5. The rights, powers, and privileges conferred by the license shall continue in force for the period or until the expiration of the term mentioned in the license unless in the meantime the license or any such concessions and privilege shall be altered, modified, or revoked as herein provided or otherwise by competent authority.

PAYMENTS.

6. In consideration of the rights, powers, and privileges granted by the license the licensee shall pay to the Minister—

(a) The sum (if any) mentioned in the license and described as a premium :

(b) The annual sum referred to in the license and described as an annual sum.

7. The premium shall become due and payable forthwith upon the issue of the license.

8. The annual sum shall be payable in advance on the 1st day of April in each year during the currency of the license, and a proportionate sum for the period from the commencement of the license until the next ensuing 1st day of April shall be paid forthwith upon the issue of the license, and if the license expires on any date other than the 31st day of March in any year the sum payable on the last 1st day of April during the term of the license shall be a proportionate payment.

ASSIGNMENT.

9. The licensee shall not assign, charge, or part with the license or with the rights, powers, and privileges thereby conferred, or any of them, without the written consent of the Minister first obtained, which consent it shall be in the absolute discretion of the Minister to grant unconditionally or to grant subject to such conditions as he thinks fit or to refuse.

REPAIR.

10. The licensee shall at all times during the continuance of the license maintain the structures mentioned in the license in good order and repair.

11. Any person authorized by the Minister may at all reasonable times enter upon the structures mentioned in the license and view the state of repair thereof; and upon the Minister's delivering to the licensee a notice in writing of any defect or want of repair in the said structures requiring the licensee within a reasonable time to be therein prescribed to repair the same, the licensee shall with all reasonable speed cause such defect to be removed or such repairs to be made.

ACCESS AND USE.

12. His Majesty, the Governor-General, and all persons in the service of the Government acting in the execution of their duties shall at all times, without payment, have free ingress, passage, and egress into, through, over, and out of the structures mentioned in the license.

13. If there is in the license a provision to the effect that there shall be free public access, then the licensee shall permit all persons at all times during the continuance of the license freely to pass and repass over the foreshore and land referred to in the license and all structures mentioned in the license.

14. If there is in the license a provision to the effect that there shall be free use and access for payers of dues, then the licensee shall permit all persons upon payment of the prescribed dues to have full and free liberty at all reasonable times to use the structures mentioned in the license, or such of the said structures as may be referred to in the provision relating to payment of dues, and all rights of ingress and egress thereto and therefrom necessary for such use.

LIGHTS.

15. If there is in the license a provision to the effect that the structures mentioned therein, or any of them, shall be lighted, then the licensee shall at all times during the continuance of the license during hours of darkness exhibit thereupon and maintain at the cost of the licensee suitable and necessary lights for the guidance of vessels:

Provided that no such light, and no light capable of being taken by mariners as a light for the guidance of vessels, shall be so exhibited until after it has been approved by the Minister.

LIABILITIES.

16. Neither the granting of the license nor anything therein or herein contained shall affect the liability of the licensee for any injury caused by any structure mentioned in the license to any vessel or boat through any default or neglect on the part of the licensee.

17. Nothing contained in the license or in these regulations shall authorize the licensee to do or cause to be done anything repugnant to or inconsistent with any law relating to the Customs, or any regulation of the Minister of Customs, or with any provisions of the Harbours Act, 1923, or any amendment thereof now or hereafter in force, or any regulations made thereunder now or hereafter in force.

LOCAL AUTHORITIES AND PUBLIC BODIES.

18. The provisions of the clauses numbered 19 to 22 hereof (inclusive) shall apply only where the licensee is a Harbour Board or the Council or Corporation of a borough or county or any other local authority or public body.

19. The licensee shall not erect, re-erect, or extend, or cause or suffer to be erected, re-erected, or extended, on the premises comprised in the license any building or structure whatever, except with the previous written consent of the Minister, which consent may be given subject to such conditions as the Minister may think fit to impose.

20. All dues and rates received on account of the premises comprised in the license shall be applied by the licensee in keeping such premises and the buildings and structures from time to time existing on or in connection therewith in good order, repair, and condition, and in the renewal or extension of such buildings and structures, subject, however, to the provisions of clause 19 hereof.

21. The licensee shall keep a separate bank account for all receipts and expenditure in respect of the premises comprised in the license, and shall cause an account of such receipts and expenditure to be balanced if the licensee is a Harbour Board or a County Council authorized to exercise the powers of a Harbour Board on the 30th day of September in every year, otherwise on the 31st day of March in every year.

22. The licensee shall appoint and provide all officers necessary for the working and management of the premises comprised in the license.

REVOCATION.

23. The rights, powers, and privileges conferred by the license may be resumed and the license be revoked at any time by the Governor-General without liability for compensation after at least three calendar months' previous notice in writing has been given by the Minister to the licensee notifying the intention of the Governor-General to effect such resumption and revoke the license.

24. Without prejudice to the discretionary power contained in the last preceding clause hereof, if at any time—

- (a) The licensee shall commit or suffer a breach of any provision expressly contained in the license or implied therein by these regulations ;
- (b) The licensee shall cease to use or occupy the structures mentioned in the license for any period of thirty consecutive days ;
- (c) The licensee shall make default for a period of thirty days after the due date in payment of any sum of money payable to the Minister under the license ;
- (d) The licensee, or any one of licensees more than one in number, being an individual, shall become bankrupt or make a composition with the creditors of the licensee or be in any manner brought under the operation of any Act for the time being in force relating to bankruptcy ;
- (e) The licensee, or any one of licensees more than one in number, being a corporate body, shall be the subject of an effective winding-up resolution or order for liquidation or be in any manner wound up or dissolved—

then, and in any such case, it shall be lawful for the Governor-General in Council, without the necessity of any previous notice to the licensee, to revoke the license, and the rights, powers, and privileges thereby conferred shall thereupon cease and determine.

25. Any revocation of the license shall take effect upon publication in the *Gazette* of a copy of the instrument of revocation, and such publication shall be sufficient notice to the licensee and to all persons concerned or interested that the license is revoked and the rights, powers, and privileges thereby granted are determined.

REMOVAL OF STRUCTURES.

26. The Governor-General may by notice given upon the expiration of the period for which the license is granted, or upon any revocation of the license, require the licensee to remove at the cost of the licensee within the time specified in the license, or if no such time be specified then within a reasonable time (which need not be specified), or within some specified reasonable time after such notice has been given to the licensee, all structures for the time being existing and comprised in or authorized by the license and restore the site to its original condition.

27. If the licensee fails to comply with a notice given under the last preceding clause hereof, the Minister may cause any such structures to be removed and the site to be restored to its original condition, and all costs incurred in such removal and restoration shall be paid by the licensee and may be recovered as a debt due to the Crown.

NOTICES.

28. Any notice or other document to be given to the licensee, whether by the Governor-General or by the Minister, shall be sufficient if signed by the Minister and served by being either—

- (a) Delivered personally to the licensee ; or
- (b) Sent by registered post letter addressed to the licensee at the usual or last known place of abode or business of the licensee in New Zealand ; or
- (c) In the case of a corporate body having a registered office, sent by registered post letter addressed to such corporate body at its registered office for the time being ; or
- (d) In the case of any corporate body delivered at the office for the time being of such body during ordinary office hours, to some person appearing to have the control or management of such office ; or
- (e) By being affixed upon any structure for the time being erected upon the lands referred to in the license.

29. If there be at any time more than one licensee, service upon any or either licensee shall be good service on each and every licensee.

30. Service as aforesaid shall be good service notwithstanding the death or incapacity of the licensee and notwithstanding that there may not be any legal representative of a deceased licensee appointed and notwithstanding that such notice or document may not be addressed to any person by name.

31. Any notice sent by registered post letter shall be deemed to be served at the time when it would be delivered at its destination in the ordinary course of registered post.

ACCEPTANCE.

32. The occupation of the structures referred to in the license or the occupation of any foreshore or land below low-water mark referred to in the license shall be sufficient evidence of the acceptance by the licensee of the terms and conditions of the license (including the provisions of these regulations).

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette* : 20th day of June, 1940.
These regulations are administered in the Marine Department.