

1960/32



THE FORESHORE LICENCE REGULATIONS 1960

COBHAM, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this 21st day of March 1960

Present:

THE RIGHT HON. W. NASH, C.H., PRESIDING IN COUNCIL

PURSUANT to the Harbours Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title—These regulations may be cited as the Foreshore Licence Regulations 1960.

2. Interpretation—In these regulations and in any foreshore licence, unless the context otherwise requires,—

“The Act” means the Harbours Act 1950:

“Foreshore”,—

(a) In relation to any tidal water, means such parts of the bed, shore, or banks of the tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides:

(b) In relation to any harbour that is not tidal, means the bed of the harbour:

“Licence” or “foreshore licence” means any licence granted by the Governor-General in Council or the Minister under section 6 or section 9 or section 162 of the Act or the corresponding provisions of any former Harbours Act; and includes any vesting of the management of a wharf granted by the Governor-General in Council or the Minister under section 192 of the Act or the corresponding provisions of any former Harbours Act:

“Licensee” means the person or persons or corporate body or bodies to whom or to which any licence is granted pursuant to section 6 or section 9 or section 162 of the Act or the corresponding provisions of any former Harbours Act, or in whom or in which the management of any wharf is vested pursuant to section 192 of the Act or the corresponding provisions of any former Harbours Act; and includes the executors, administrators, successors, and assigns of a licensee; and, where a licence is granted to or for the time being vested in more than one person, includes each and every one of those 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:

“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 licence affixed to or resting on the soil, or floating in the water the erection, use, or maintenance of which is authorised by the licence:

Expressions defined in the Act have the meanings so defined.

3. Application—The provisions of these regulations shall apply to every licence, except so far as expressly negated or modified or inconsistent with the express provisions of the licence.

4. Premises—The rights, powers, and privileges conferred by any licence shall extend and apply only to the part of the foreshore and to the part of the bed of the harbour or of the sea necessary for the maintenance of the structures mentioned in the licence at the site shown on the plan referred to in the licence.

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

6. Payments—(1) In consideration of the rights, powers, and privileges granted by the licence, the licensee shall pay to the Minister—

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

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

(2) The premium shall become due and payable forthwith upon the issue of the licence.

(3) In the case of any licence granted before the 17th day of November 1958, there shall be payable—

(a) On the 1st day of April 1960, a proportionate part of the annual sum for the period commencing on that date and ending on the next anniversary of the date of the commencement of the licence:

(b) On each anniversary after the 1st day of April 1960 of the date of the commencement of the licence, the annual sum payable under the licence:

Provided that, if the licence expires on any date other than an anniversary of the date of the commencement of the licence, the sum payable on the last anniversary of the date of the commencement of the licence shall be a proportionate payment.

(4) In the case of any licence granted on or after the 17th day of November 1958, the annual sum shall be payable in advance—

(a) On the date of the commencement of the licence; and

(b) On the anniversary of that date in each year during the currency of the licence:

Provided that, if the licence expires on any date other than an anniversary of the date of the commencement of the licence, the sum payable on the last anniversary of the date of the commencement of the licence shall be a proportionate payment.

7. Assignment—The licensee shall not assign, charge, or part with the licence 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.

8. Repair—(1) The licensee shall at all times during the continuance of the licence maintain the structures mentioned in the licence in good order and repair.

(2) Any person authorised by the Minister may at all reasonable times enter upon the structures mentioned in the licence 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 the defect to be removed or the repairs to be made.

9. Access and use—(1) Her 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 licence.

(2) If there is in the licence 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 licence freely to pass and repass over the foreshore and land referred to in the licence and all structures mentioned in the licence.

(3) If there is in the licence 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 licence, or such of those 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.

10. Lights—If there is in the licence 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 licence 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.

11. Liabilities—(1) Neither the granting of the licence nor anything therein or herein contained shall affect the liability of the licensee for any injury caused by any structure mentioned in the licence to any vessel or boat through any default or neglect on the part of the licensee.

(2) Nothing in the licence or in these regulations shall authorise 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 Act, or any regulations made thereunder now or hereafter in force.

12. Local authorities and public bodies—(1) The provisions of this regulation 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.

(2) 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 licence 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.

(3) All dues and rates received on account of the premises comprised in the licence shall be applied by the licensee in keeping the 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 those buildings and structures, subject to the provisions of subclause (2) of this regulation.

(4) The licensee shall keep a separate bank account for all receipts and expenditure in respect of the premises comprised in the licence, and shall cause an account of such receipts and expenditure to be balanced if the licensee is a Harbour Board or a County Council authorised 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.

(5) The licensee shall appoint and provide all officers necessary for the working and management of the premises comprised in the licence.

13. Revocation of licence—(1) The rights, powers, and privileges conferred by the licence may be resumed and the licence be revoked at any time by the Governor-General in Council, in the case of a licence granted by the Governor-General in Council, and by the Minister, in the case of a licence granted by the Minister, 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 or the Minister, as the case may be, to effect the resumption and revoke the licence.

(2) Without prejudice to the discretionary power conferred by subclause (1) of this regulation, if at any time—

- (a) The licensee commits or suffers a breach of any provision expressly contained in the licence or implied therein by these regulations; or
- (b) The licensee ceases to use or occupy the structures mentioned in the licence for any period of 30 consecutive days; or
- (c) The licensee makes default for a period of 30 days after the due date in payment of any sum of money payable to the Minister under the licence; or
- (d) The licensee, or any one of licensees more than one in number, being an individual, becomes bankrupt or makes a composition with his creditors or is in any manner brought under the operation of any Act for the time being in force relating to bankruptcy; or

- (e) The licensee, or any one of licensees more than one in number, being a corporate body, is the subject of an effective winding-up resolution or order for liquidation or is in any manner wound up or dissolved—

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

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

14. Removal of structures—(1) The Minister may, by notice given upon the expiration of the period for which the licence is granted, or upon any revocation of the licence, require the licensee to remove at the cost of the licensee within the time specified in the licence, or if no such time be specified then within a reasonable time (which need not be specified), or within some specified reasonable time after the notice has been given to the licensee, all structures for the time being existing and comprised in or authorised by the licence and restore the site to its original condition.

(2) If the licensee fails to comply with a notice given under subclause (1) of this regulation, 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 the removal and restoration shall be paid by the licensee and may be recovered as a debt due to the Crown.

15. Notices—(1) 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—

- (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 the corporate body at its registered office for the time being; or
- (d) In the case of any corporate body (whether or not it has a registered office), delivered at its office for the time being during ordinary office hours to some person appearing to have the control or management of that office; or
- (e) Affixed upon any structure for the time being erected upon the lands referred to in the licence.

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

(3) 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 the notice or document may not be addressed to any person by name.

(4) 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.

16. Acceptance—The occupation of the structures referred to in the licence or the occupation of any land (being part of the foreshore or of the bed of any harbour or of the sea) referred to in the licence shall be sufficient evidence of the acceptance by the licensee of the terms and conditions of the licence (including the provisions of these regulations).

17. Offences and penalty—Where the Governor-General in the Order in Council granting any licence makes any regulations as to the use of the foreshore or any part of the bed of any harbour or of the sea, or of any structure or work thereon, every person (not being the licensee) commits an offence who does any act in contravention of or fails to comply with any provision of the regulations, and, unless in the Order in Council some other penalty is provided, is liable on summary conviction to a fine not exceeding £20.

18. Revocations—The following regulations are hereby revoked:

- (a) The Foreshore Licence Regulations 1940:*
- (b) The Foreshore Licence Regulations 1940, Amendment No. 1†.

T. J. SHERRARD,
Clerk of the Executive Council.

*S.R. 1940/128

†S.R. 1958/154

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

The regulations re-enact in an amended form the Foreshore Licence Regulations 1940, and make such changes as are necessary in view of the provisions of sections 7 and 8 of the Harbours Amendment Act 1959 providing for the issue of foreshore licences by either the Governor-General in Council or the Minister of Marine and for the issue of licences including the bed of a navigable lake or river or of the sea.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 March 1960.

These regulations are administered in the Marine Department.