

[201X] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The St Mary's (Isles of Scilly) Harbour Revision Order [201X]

Made - - - - []

Laid before Parliament []

Coming into force - - []

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His Royal Highness Charles Philip Arthur George Prince of Wales Duke of Cornwall and Rothesay Earl of Chester and Carrick Baron of Renfrew Lord of the Isles and Great Steward of Scotland has applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an order(b) under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 14(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 14(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(b) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

(d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).

(e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

PART 1
PRELIMINARY

Citation and commencement

1.—(1) This order may be cited as the St Mary's Harbour Revision Order [201X] and shall come into force on [].

(2) The Isles of Scilly (Pilotage) Harbour Revision Order 1988, the St Mary's (Isles of Scilly) Harbour Revision Order 2007 and this Order may together be cited as the St Mary's Harbour Orders 1988 to [201X].

Interpretation

2. — (1) In this Order—

“the Act of 1847” means the Harbour Docks and Piers Clauses Act 1847**(a)**;

“the Order of 1988” means the Isles of Scilly (Pilotage) Harbour Revision Order 1988**(b)**;

“the Order of 2007” means the St Mary's (Isles of Scilly) Harbour Revision Order 2007**(c)**;

“aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same;

“the Authority” means the personage for the time being entitled to the Duchy of Cornwall;

“charges” means the charges, rates, tolls and dues which the Commissioners are for the time being authorised to demand, take and recover in relation to the harbour undertaking;

“the chief executive” means any person appointed as such by the Commissioners (or by virtue of this Order) and includes any other person for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of chief executive;

“the Commissioners” means the St Mary's Harbour Commissioners;

“the Current Harbour Master” means the person acting as harbour master at the harbour on the date this Order comes into force.

“functions” includes powers and duties;

“general direction” means a direction given under article 30 of this Order;

“harbour” has the same meaning as given by article 38 of this Order;

“the harbour master” means any person appointed as such by the Commissioners, and includes his duly authorised deputies and assistants and any other person for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of harbour master;

“the harbour premises” means the docks, quays, piers, wharves, berths, breakwaters, landing places, roads, sheds and all other works and conveniences, land and premises at any time used, intended to be used or set aside for the purposes of, or in connection with, the harbour undertaking and includes the works constructed or to be constructed under the Order of 2007;

“the harbour undertaking” means the undertaking of the Commissioners authorised by this Order;

(a) 1847 c.27.

(b) S.I. 1988/2156

(c) S.I. 2007/1554

“the Harbour Users Group” means the group of harbour stakeholders which at the date this Order comes into force are members of the group, known as the Harbour Users Group, which, since May 2011, has been consulted by the Current Harbour Master.

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“the Interim Chairman” means the person designated as chairman at the harbour on the date this Order comes into force.

“the Interim Selection Committee” means the Interim Chairman, the Current Harbour Master and a stakeholder selected from the Harbour Users Group by the Current Harbour Master and the Interim Chairman.

“land” includes land covered by water.

“the level of high water” means the level of mean high-water springs;

“master”, in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

“the new constitution date” means the date one month from the day this Order comes into force;

“operator” and “telecommunications code system” have the meanings given by paragraph 1(1) of Schedule 4 to the Telecommunications Act 1984**(a)**;

“personal watercraft” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a water jet engine or other mechanical means of propulsion and steered either—

(a) by means of a handlebar-operated linkage system (with or without a rudder at the stern); or

(b) by the person or persons riding the craft using his or their body weight for the purpose; or

(c) by a combination of the methods referred to in (a) and (b) above;

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre on water but not a hovercraft or hydrofoil vessel;

“special direction” means a direction given under article 33 of this Order;

“statutory undertaker” means —

(a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990**(b)**;

(b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949**(c)**;

(c) any operator of a telecommunications code system;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans and mobile homes and includes a hovercraft or any other amphibious vehicle;

“vessel” means a ship, boat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

(a) 1984 c.12

(b) 1990 c.8

(c) 1949 c. 74, section 1 was amended by the Local Government Act 1972 (c. 70), Schedule 30.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

Incorporation of provisions of Commissioners Clauses Act 1847

3. — Sections 39, 53, 56, 58 to 65, 69 to 74, and 96-102, 109 -111 of the Commissioners Clauses Act 1847^(a) (so far as applicable and not inconsistent with the St Mary's Harbour Orders 1988 – 201[]) shall be incorporated with this Order.

Incorporation of provisions of Harbour, Docks and Piers Clauses Act 1847

4. —(1) The Act of 1847 (except sections 6 to 26, 28, 31, 42, 48 to 50, 67, 70, 83, 84 and 92 and 101), (so far as applicable to the purposes and not inconsistent with the provisions of the St Mary's Harbour Orders 1988 to 201[]), is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 63 shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) In construing the provisions of the Act of 1847 as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Commissioners and the expression “the harbour, dock, or pier” shall mean the harbour, the breakwaters and those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;

(b) for the definition of the word “vessel” in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2(1) of this Order;

(c) the reference in section 53 of the Act of 1847 to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the harbour master to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

^(a) 1847 c16.

PART 2
CONSTITUTION

Transfer of jurisdiction

5. — On the new constitution date the Authority shall cease to be the harbour authority for the harbour and to have any duties, powers, rights, privileges or authorities in respect of it, and the Commissioners shall become the harbour authority and known as the St Mary's Harbour Commissioners.

Constitution of first Commissioners

6.—(1) Subject to article 11, the first Commissioners shall consist of no more than ten able to act (in accordance with article 12) as follows—

- (a) the Interim Chairman;
- (b) the Current Harbour Master (as harbour master and chief executive);
- (c) one appointed by the Duchy of Cornwall;
- (d) up to seven, but no less than five appointed by the Interim Selection Committee.

but the Commissioners shall be properly constituted at any time if there are no fewer than seven Commissioners (in office under this paragraph or article 10 or co-opted under article 11) able to act.

(2) A person must not be appointed under sub-paragraphs (1)(c) to (d) to act as a Commissioner other than in accordance with the criteria set out in article 7(2) below.

(3) The Interim Selection Committee and, in relation to making its appointment under 1(c), the Duchy of Cornwall shall secure, so far as reasonably practicable, that the Commissioners appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient and economic discharge by them of their functions and that at least three of them shall have special knowledge, experience or ability of category (i) in article 7(2).

(4) In making an appointment under paragraph (1), the Interim Selection Committee and, in relation to making its appointment under 1(c), the Duchy of Cornwall, must have regard to any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

Constitution of subsequent Commissioners

7.—(1) Subject to article 11, after the appointment and term of the first Commissioners, the Commissioners shall consist of no more than ten able to act (in accordance with article 12) as follows—

- (a) seven to nine appointed by the Commissioners;
- (b) the chief executive for the time being of the Commissioners;
- (c) the harbour master for the time being of the Commissioners (if the roles of chief executive and the harbour master are not being fulfilled by the same person);

but the Commissioners shall be properly constituted at any time if there are no fewer than

seven Commissioners (in office under this paragraph or article 6 or article 10 or co-opted under article 11) able to act.

(2) A person must not be appointed under paragraph (1)(a) to (c) or article 10 or co-opted under article 11 to act as a Commissioner unless he has special knowledge, experience or ability appropriate to the efficient, effective and economic discharge of a Commissioners' functions including, in particular (but without prejudice to the generality of the foregoing), special knowledge, experience or ability in one or more of the following—

- (a) management of harbours;
- (b) shipping or other modes of transport;
- (c) appropriate commercial or industrial experience;
- (d) financial expertise;
- (e) administration;
- (f) organisation of workers;
- (g) sport and recreational uses of harbours;
- (h) environmental issues;
- (i) specific knowledge of, or interest in, the local community and the wider community or the economic and social context within which the Commissioners operate;
- (j) tourism and leisure;
- (k) health and safety;
- (l) legal expertise; and
- (n) any other skills and abilities considered from time to time by the appointing bodies to be relevant to the discharge by the Commissioners of their functions.

(3) The Commissioners shall secure, so far as reasonably practicable, that the Commissioners appointed by them will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient and economic discharge by them of their functions and that at least three of them shall have special knowledge, experience or ability of category (i) in paragraph (2).

(4) In making an appointment under paragraph (1), or co-opting a person under article 10, the Commissioners, must have regard to any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

Appointment and terms of office of first Commissioners

8.—(1) The initial appointments under article 6(1)(a) and (b) are deemed to be made at the new constitution date by the coming into force of this Order. The initial appointments under article 6(1)(c) to (d) must be made before or as soon as practicable after the new constitution date.

(2) Of the Commissioners appointed initially under article 6(1)(a) to (d)—

- (a) the Interim Chairman is deemed appointed as chairman of the Commissioners to hold office for a term of one year starting on the new constitution date comes into force;
- (b) the Current Harbour Master is deemed to be appointed as harbour master and chief

executive of the Commissioners;

(c) one appointed by the Duchy of Cornwall to hold office for a term of four years from the new constitution date;

(d) up to seven, but no less than five appointed by the Interim Selection Board.

(3) Of the Commissioners appointed by under paragraph 6(1)(d):

(a) two shall hold office for the period of two years from 1 [March] next following their appointment;

(b) three shall hold office for the period of three years from 1 [March] next following their appointment;

(c) up to two shall hold office for the period of four years from 1 [March] next following their appointment;

as the Interim Selection Board shall specify when they make each of those appointments.

Terms of office of subsequent Commissioners

9. — A Commissioner appointed under article 7(1)(a) (other than a Commissioners appointed under article 6 above) shall, unless appointed to fill a casual vacancy, hold office for a period not exceeding three years from 1 [March] next following his appointment.

Casual vacancies

10.—(1) A casual vacancy arising in the office of a Commissioner appointed under article 6(1)(a), (c) or (d) or 7(1)(a) must, unless it is not reasonably practical to do so, be filled, by the appointment, in accordance with articles 6(2) to (4) or 7(3) and (4), of a Commissioner by the Commissioners (or in respect of 6(1)(c) the Duchy of Cornwall).

(2) A Commissioner appointed to fill a casual vacancy under this article shall (unless he dies or otherwise ceases to be a Commissioner) hold office during the remainder of the term for which the replaced Commissioner was appointed.

Power to co-opt Commissioners

11. — The Commissioners may co-opt not more than two persons to act as additional Commissioners for such period not exceeding a term of twelve months as the Commissioners may specify at the time of the co-option.

Declaration to be made by a person appointed as a Commissioner

12.—(1) No person shall be capable of acting as a Commissioner until he has made a declaration substantially in the form set out in Schedule 1 to this Order;

(2) A person who fails to make such a declaration within three months of the date of his appointment ceases to be a Commissioner.

Disqualification

13. — If the Commissioners are satisfied that a Commissioner—

(a) has without the permission of the Commissioners been absent from duly convened meetings of the Commissioners —

(i) for a period during which three such meetings have been held, or

(ii) for a period of three months,

whichever of these periods is the longer; or

(b) has become bankrupt or has entered into an arrangement with his creditors; or

(c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner; or

(d) is otherwise unable, unwilling or unfit to discharge the functions of a Commissioner,

the Commissioners may declare the office of that Commissioner to be vacant with effect from the date of that declaration.

Indemnity insurance for Commissioners

14. — The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnify the Commissioners jointly and severally against personal liability arising from any act or omission of the Commissioners or any of them, not being an act or omission which the Commissioners or, as the case may be, the Commissioner knew to be a breach of duty or, concerning which the Commissioners or, as the case may be, the Commissioner was reckless as to whether it was such a breach.

Incidental provisions relating to Commissioners

15.— On and after the date this Order comes into force the provisions of Schedule 2 to this Order shall have effect with respect to the Commissioners.

PART 3

FINANCE

Financial Power to borrow

16.—(1) The Commissioners, including any subsidiary of the Commissioners, may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Commissioners or a subsidiary under this article, the Commissioners or subsidiary may, if they see fit, borrow those moneys upon the security of some or all of their assets for the time being or of some or all of their revenues or of some or all of both their assets and their revenues.

Reserve funds

17.—(1) The Commissioners may establish and maintain reserve funds.

(2) The Commissioners may if they think fit carry to a reserve fund any part of their receipts on revenue account as shall be available for the purpose.

Payment of subscriptions, etc.

18. — The Commissioners may pay or make reasonable subscriptions, payments or donations, whether annually or otherwise, to the funds of such associations, public institutions or charities as the Commissioners think fit.

Publication of Commissioners' annual report and annual statement of accounts

19. —As soon as reasonably practicable after their annual report and annual statement of accounts is prepared, the Commissioners shall make available a copy of the report and statement for a period of three months at the offices the Commissioners for inspection free of charge by members of the public and shall, subject to the payment of a reasonable charge, supply a copy of the report and statement to any person who requests to be supplied with a copy.

PART 4 CHARGES

Charges for services or facilities

20. —In addition to their power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Commissioners may demand, take and recover such reasonable charges for services and facilities provided by them at the harbour and the harbour premises as they may from time to time determine.

Payment of charges

21.— (1) The charges which the Commissioners are for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment shall be payable before the removal from the harbour or the harbour premises of any vessel or goods in respect of which they are payable, and may be demanded, taken and recovered by such persons, at such places, at such times and under such terms and conditions as the Commissioners may from time to time specify in their published list of charges.

(2) Charges payable to the Commissioners on or in respect of—

(a) a vessel, shall be payable by the owner or master thereof;

(b) goods, shall be payable by the owner, consignee or shipper thereof.

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

(4) Without prejudice to the generality of paragraph (1) above, the terms and conditions as to the payment of charges which the Commissioners may from time to time specify may

include the time when a charge falls due for payment and may require such information to be given to the Commissioners by the owner or master of a vessel or a person using a service or facility of the Commissioners as the Commissioners may require in connection with the assessment or collection of a charge.

Compounding arrangements and rebates

22.— (1) The Commissioners may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Commissioners to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Deposit for charges

23.— (1) The Commissioners may, if they think fit, require a person who incurs or is about to incur a charge to deposit with them, or to guarantee, such sum of money as is, in the opinion of the Commissioners, reasonable having regard to the amount or probable amount of the charge.

(2) Where such a person fails to deposit or guarantee the sum of money required the Commissioners may detain in the harbour or on the harbour premises the vessel or goods in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Liens for charges

24.— (1) A person who by agreement with the Commissioners collects charges on their behalf and who pays or gives security for the payment of charges on goods in his possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not himself liable for the payment of charges may pay or by agreement with the Commissioners give security for charges on goods in his custody, and in that event he shall have a like lien on the goods for the amount of those charges as he would have in respect of his charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for landing place

25.— The harbour master may prevent a vessel from using a landing place provided by the Commissioners, if the master of the vessel refuses to pay the charges for such use.

Exemptions from harbour dues

26.— (1) Except insofar as may be agreed between the Commissioners and the government department or person concerned the Commissioners shall not be entitled to demand harbour dues from, or in respect of—

(a) vessels—

- (i) in the service of Trinity House;
- (ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward;
- (iii) belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service;
- (iv) in the service of a police force or other emergency service;
- (v) in the service of the Crown.
- (vi) which are fishing vessels belonging to countries with which for the time being treaties exist exempting from duties and port charges such vessels when forced by stress of weather to make use of the harbour and not discharging any part of its cargo while making use thereof.

(b) the Commissioners of Customs and Excise or any officer or other person employed in their service in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, the Commissioners;

(c) an officer of the Commissioners of Customs and Excise or any other person employed in their service;

(d) a person employed by the Secretary of State for Defence while in the execution of his duty.

(2) Officers of the Department of Transport and Department for Environment, Food and Rural Affairs in the execution of their duties shall at all times be exempt from harbour dues.

(3) In this article “harbour dues” means ship, passenger and goods dues which the Commissioners may demand under section 26 of the Harbours Act 1964.

Recovery of charges

27. — In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with this Order, (and, in a case where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay the same or any part thereof, whether or not the Commissioners' collector has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Commissioners may recover any charges payable to them as a debt in any court of competent jurisdiction.

Harbour master may prevent sailing of vessels

28. — The harbour master may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to him of the payment of any charges payable in respect of the vessel or of passengers thereon or of the goods imported or exported therein.

PART 5
GENERAL DIRECTIONS, SPECIAL DIRECTIONS AND BYELAWS

General byelaws

29. —(1) The Commissioners may make such byelaws as they think fit for the efficient management and regulation of the harbour and the harbour premises.

(2) Without prejudice to the generality of paragraph (1), the Commissioners may, from time to time, make such byelaws as they think fit with reference to all or any of the following—

- (a) regulating the use of any works and facilities provided by the Commissioners;
- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour or the harbour premises and to any aids to navigation which are used in connection with the harbour;
- (c) regulating the conduct of all persons in the harbour or the harbour premises, not being—
 - (i) members of a police force;
 - (ii) officers or servants of the Crown; or
 - (iii) members of a fire brigade, whilst in the exercise of their duties as such;
- (d) regulating the placing, maintenance and use of moorings within the harbour;
- (e) preventing and removing obstructions or impediments within the harbour or the harbour premises;
- (f) regulating the launching of vessels from the harbour premises;
- (g) regulating or prohibiting the use on the harbour premises, in the harbour or on board any vessel therein of fires, lights, tobacco or any other substance, equipment, tools or appliances which the Commissioners consider involve a risk of fire, explosion or chemical reaction;
- (h) prohibiting the use of or regulating the use, movement, speed, placing, loading, unloading, driving and parking of vehicles within the harbour premises;
- (i) requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the harbour;
- (j) regulating the navigation of vessels in the harbour and their entry into and departure therefrom and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
- (k) regulating the embarkation of persons on, or their disembarkation from, vessels within the harbour;
- (l) prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground within the harbour;
 - (ii) by vessels or other devices used for marking obstructions within the harbour; and
 - (iii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the harbour;

- (m) prohibiting or regulating the discharge into the harbour of any material or substance;
- (n) regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, breakwater or other installation or structure of any kind within the harbour, from any vessel within the harbour or from the foreshore where such fishing interferes with the operation of the port or the safety of navigation in the harbour;
- (o) regulating or prohibiting bathing within the harbour;
- (p) regulating or prohibiting the use by vehicles of the foreshore within the harbour premises;
- (q) regulating the berthing, mooring and anchoring of vessels in any part of the harbour or the harbour premises, and regulating the careening and beaching of vessels within the harbour premises;
- (r) regulating the use within the harbour of yachts, sailing boats, rowing boats, pleasure craft, windsurfers, personal watercraft and other small craft;
- (s) regulating or prohibiting the activities within the harbour of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar recreational pursuits;
- (t) regulating the conveyance to and the laying down at or on the harbour premises of all goods intended for shipment;
- (u) regulating the control of animals within the harbour or the harbour premises;
- (v) preventing the disposal of any waste matter except at places or in a manner prescribed by the Commissioners;
- (w) regulating the conveyance, landing, laying down, discharge and removal of goods, gear, equipment, timber, logs, floats, or rafts of timber and other items within the harbour or the harbour premises;
- (x) regulating the exercise of the powers vested in the harbour master; and
- (y) for the purposes specified in section 83 of the Act of 1847.

But such byelaws shall not come into operation until the same have received the allowance and the confirmation of the Secretary of State which shall be sufficient for all purposes.

(3) In this article “signals” includes sound signals.

(4) Byelaws made under this article may—

- (a) provide for imposing upon a person offending against them, or against any condition, requirement or direction imposed, made or given thereunder, a fine not exceeding level 4 on the standard scale on summary conviction;
- (b) relate to the whole of the harbour or the harbour premises or to any part thereof;
- (c) make different provisions for different parts of the harbour or the harbour premises or in relation to different classes of vessels or vehicles; and
- (d) otherwise make different provision for different circumstances.

(5) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the

commission of such an offence;

(b) that he had a reasonable excuse for his act or failure to act; or

(c) that the offence was not caused or facilitated by any act or neglect on his part or on the part of any person engaged or employed by him and that all reasonable steps were taken to prevent the commission of the offence.

(6) The provisions of sections 85 to 90 of the Act of 1847 (which relate to the procedure for making, and evidence of, byelaws) shall apply to any byelaws made by the Commissioners under this article; and those provisions, in their application to any such byelaws, shall have effect.

Power to make general directions as to use of harbour, etc.

30.—(1) The Commissioners may, in accordance with the requirements of article 31, give or amend a direction for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora and fauna in the harbour.

(2) A direction under this article may apply—

(a) to all vessels or to a class of vessels;

(b) to persons designated in the direction;

(c) to the whole of the harbour or to a part;

(d) at all times or at certain times or at certain states of the tide;

and every direction must specify the extent of its application in relation to the matters referred to in sub- paragraphs (a), (b), (c) and (d).

(3) The Commissioners may revoke a direction given under paragraph (1).

Procedure for giving, amending or revoking general directions

31.—(1) Subject to paragraph (7), if the Commissioners propose to give, amend or revoke a general direction, they must—

(a) give notice in writing of the proposal to the Chamber of Shipping and the Royal Yachting Association and to such other persons or organisations as it considers appropriate for the purposes of the application of this provision (“designated consultees”);

(b) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks from the date of the notice given in accordance with sub-paragraph (a) for written representations to be made by the designated consultees to the Authority regarding the proposal;

(c) have regard to any representations made by designated consultees during consultation;

(d) give notice in writing to the designated consultees following consultation as to whether the Commissioners propose to proceed with the proposal and, if so, specifying whether it is making any modifications to the proposal and their reasons for so doing;

(e) if the Commissioners propose to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm

in writing whether they maintain their objection to the proposal within 28 days from the date of the notice given in accordance with sub-paragraph (d), or such longer period as the Commissioners may specify.

(2) Where the Commissioners have complied with paragraph (1), they may proceed to give, amend or revoke a general direction if:

- (a) none of the designated consultees has made representations against the proposal;
- (b) none of the designated consultees which made representations against the proposal has confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(e);

or

- (c) where a designated consultee has maintained an objection in accordance with paragraph (1)(e), the requirements of paragraph (3) have been complied with.

(3) Where a designated consultee has confirmed in writing to the Commissioners that they maintain their objection to a proposal—

- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
 - (i) by agreement between the Commissioners and each designated consultee maintaining an objection in accordance with paragraph (1)(e) (“the parties”); or
 - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties;

(b) so far as is reasonably practicable within three months of the referral, the adjudicator must:

- (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing; and
- (ii) make a written report to the parties with findings and recommendations on the issue;

(c) the Commissioners must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator’s report (but they are not bound to give effect to any recommendations) and, once they have decided, must give notice in writing to the designated consultees of their decision and the reasons for that decision.

(4) Except as otherwise provided for in paragraph (3), the adjudicator may determine the procedure for the making of representations and the conduct of any hearing.

(5) The costs incurred by the adjudicator and the parties from a referral under paragraph (3) are to be paid by one of more of the parties as the adjudicator may direct.

(6) If the Commissioners wish to exercise the power to give, amend or revoke a general direction in a form materially different from both the form notified to the designated consultees under paragraph (1)(d) and (where paragraph (3) applies) the form recommended by the adjudicator under paragraph (3)(b), they must proceed, unless the designated consultees agree in writing, as if the proposal is a new proposal to which paragraph (1) applies.

(7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety the Commissioners propose to give or amend a general direction—

(a) in an emergency; or

(b) relating to a intended activity or operation within the harbour which—

(i) is expected to commence less than 4 months after the Commissioners are notified or otherwise becomes aware of it;

(ii) is to last less than 28 days; and

(iii) the Commissioners consider that the giving or amending of a general direction in relation to that activity or operation is required, taking into account other activities or operations in the harbour which may be affected.

(8) Where the Commissioners proceed to give or amend a general direction in accordance with paragraph (7), they must—

(a) as soon as is practicable give notice of the direction or amendment to those persons who would have been designated consultees had paragraph (1)(a) applied; and

(b) if the direction or amendment is intended to continue in force for more than 3 months, apply the procedure under paragraphs (1)(b) to (e) and (2) to (6) to the direction or amendment with the following modifications—

(i) a reference to the ‘proposal’ in those paragraphs is to be read as a reference to the direction or amendment; and

(ii) a reference to the Commissioners ‘proceeding’ with a proposal is to be read as a reference to the Commissioners determining that the direction or amendment should remain in force.

Publication of general directions

32.—(1) Subject to paragraph (3), the Commissioners must publish a notice of the giving, amendment or revocation of a general direction as soon as practicable on one occasion in a newspaper circulating in the locality of the harbour.

(2) The notice must state a place at which copies of the general direction may be inspected.

(3) In an emergency, the Commissioners may give notice of the giving or amendment of a general direction in any matter which they consider to be appropriate.

Special directions

33.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the harbour for any of the following purposes:

(a) requiring persons to comply with a requirement made in or under a general direction;

(b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel;

(c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises;

(d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;

(e) prohibiting or restricting the use of fires or lights;

(f) regulating the use of ballast;

(g) requiring the removal from any part of the harbour of the vessel if—

(i) it is on fire;

(ii) it is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property;

(iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment thereof by other vessels or persons or the dispatch of business thereat; or

(iv) its removal is necessary to enable maintenance or repair work to be carried out to the harbour premises; and

(h) requiring its removal outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

Failure to comply with directions

34.—(1) The master of a vessel who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) above, it shall be a defence for the person charged to prove that he had reasonable grounds for believing that non-compliance with the direction in question was necessary to secure the safety of any vessel or to prevent injury to any person or damage to any vessel or cargo, or that in the circumstances compliance was impracticable.

Enforcement of directions

35.—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction is not complied with within a reasonable time, the harbour master may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with: Provided that the powers of this paragraph shall not be exercised—

(a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or

(b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Commissioners in the exercise of the powers conferred by paragraph (1) above shall be recoverable by them as if they were a charge of the Commissioners in respect of the vessel.

Master's responsibility in relation to directions

36. — The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given

in relation to his vessel, to persons on board the vessel, to the cargo or any other person or property.

PART 6

MISCELLANEOUS AND GENERAL

General functions of St Mary's Harbour Commissioners

37.—(1) The Commissioners may, subject to the provisions of this Order, take all such steps from time to time as they may consider necessary or desirable for the maintenance, operation, management and improvement of the harbour, the harbour approaches, the harbour premises and the facilities (including recreational facilities) afforded therein or in connection therewith, and for the conservation of the harbour's flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without prejudice to the generality of the foregoing, the Commissioners may—

(a) improve, maintain, regulate, manage, mark and light the harbour and the harbour premises and provide harbour facilities therein;

(b) subject to obtaining the necessary rights in or over land—

(i) execute and place in and over the harbour and the harbour premises such structures, works and equipment as are required; and

(ii) operate, maintain, renew, alter, extend, demolish and reconstruct structures, works and equipment in the harbour and the harbour premises (including those executed or placed pursuant to sub-paragraph (i) above); and

(c) in recognition of the importance of the harbour to the viability of the communities of the Isles of Scilly, undertake activities at a lower than commercial rate of return for the benefit of harbour stakeholders;

(d) do all other things which in their opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.

(3) The Commissioners shall, from time to time, formulate, publish and review a management plan ('Strategic Harbour Plan') in relation to their maintenance, conservation, operation, management and improvement of the harbour undertaking, which, they shall have regard to when performing their functions. The Strategic Harbour Plan shall recognise the importance of the harbour to the viability of the communities of the Isles of Scilly.

(4) In the exercise of the powers of sub-paragraph (2)(b) above, the Commissioners shall not—

(a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or

(b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus, without the consent of the statutory undertaker concerned.

(5) This article is without prejudice to the powers of the Commissioners under or by virtue of any other enactment.

Harbour Limits

38. — (1) The limits of the harbour within which the Commissioners shall exercise jurisdiction as a harbour authority and the powers of the Harbour Master may be exercised are –

- (a) From a point on Newman Point on the North Headland of Garrison Hill, St Mary's at 49 degrees 53.02'N 06 degrees 19.30'W; thence following an imaginary straight line to a point on Newman Rock at 49 degrees 55.07'N 06 degrees 19.38'W; thence following an imaginary straight line in a north easterly direction to the western most point of Taylors Island at 49 degrees 55.42'N 06 degrees 18.83'W; thence following the level of high water along the south west coastline of Taylors Island to a point on Taylors Island at 49 degrees 55.39'N 06 degrees 18.75'W thence following an imaginary straight line in a south easterly direction to intersect the level of high water on Porthloo Beach at a point 49 degrees 55.33'N 06 degrees 18.50'W; thence following the outer edge of the boundaries shown edged red on the plan around the landward limits of the harbour to a point at Newman Point on the North Headland of Garrison Hill, St Mary's at 49 degrees 53.02'N 06 degrees 19.30'W but excluding the whole of Newford Island situated above the level of high water (all coordinates in degrees, minutes and decimals of minutes and based on WGS 84 datum) and also include-
- (b) Any buoy belonging to the Commissioners if moored within six hundred feet of the head of the existing pier, shall, when used by vessels be deemed to be included within such limits;
- (c) The extent of those parts of the harbour premises not within that area.

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbour referred to in this article and the boundaries shown on the plan the descriptions in question shall prevail over the plan.

Advisory bodies

39.—(1) The Commissioners must establish one or more advisory body or bodies which the Commissioners must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) The Commissioners must make arrangements for every such advisory body to meet not less than twice a year.

(3) The Commissioners must take into consideration any matter, recommendation or representation which may from time to time be referred or made to them by such an advisory body whether or not that advisory body has been consulted by the Commissioners on the matter, recommendation or representation so referred or made.

(4) The advisory body or bodies established pursuant to this article must consist of such number or numbers of persons appointed by the Commissioners as the Commissioners from time to time consider appropriate.

(5) Appointments to any such advisory body must be made by the Commissioners in accordance with a scheme prepared by them for that purpose and the scheme must provide

for the appointment of persons who, in the opinion of the Commissioners, are representative of persons having an interest in the functioning of the harbour.

(6) Any such advisory body may determine its own quorum and procedure and must appoint a chairman.

(7) An individual member of any such advisory body may, on giving notice in writing to the chairman of that body, send a substitute to any meeting of the body.

(8) A member of such an advisory body may hold office for the period of three years from the date of this appointment and at the end of that period will be eligible for reappointment.

(9) A member of such an advisory body may resign his office at any time by notice in writing given to the chairman of the Commissioners.

Development of land etc.

40.—(1) If it conduces to the improvement, maintenance or management of the harbour in an efficient and economical manner, the Commissioners may, subject to obtaining the necessary rights in or over land —

(a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbour; or

(b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbour.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a Commissioners referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Commissioners would not themselves have the power to do that thing.

Powers to grant tenancies and to dispose of land

41.—(1) The Commissioners may, for the purposes of or in connection with the carrying on of the undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbour for such period, at such rents and other considerations and on such terms and conditions as they think fit.

(2) The Commissioners may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery, equipment or other property vested in them if they consider that—

(a) the property is surplus to that which is required for the purpose of the harbour; or

(b) it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Commissioners, for such consideration and on such terms and conditions as they think fit.

Other commercial activities

42.—(1) If it conduces to the improvement, maintenance or management of the harbour in an

efficient and economical manner, the Commissioners may, in addition to any other powers conferred on the Commissioners—

(a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person; or

(b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company, for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a Commissioners referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Commissioners would not themselves have the power to do that thing.

(2) The powers of the Commissioners under this article are additional to the powers of the Commissioners under section 37 of the Docks and Harbours Act 1966(a).

Power to become a member of a company or subscribe for securities

43.— The Commissioners may for the purposes of or in connection with the carrying on of the undertaking subscribe for or acquire shares or securities in, or become a member of, any body corporate.

Power to delegate functions

44.— Subject to paragraph 9B of Schedule 2 to the Harbours Act 1964(b) (functions which cannot be delegated under a power conferred by a harbour revision order), the Commissioners may delegate the performance of any of their functions to be carried out by any such Company as is referred to in article 42(1)(b).

Moorings

45.—(1) The Commissioners may provide, place, lay down, maintain, renew, use, have and remove such moorings within the harbour—

(a) on land owned or leased by them or in which they hold an appropriate interest; or

(b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour, as they consider necessary or desirable for the convenience of vessels.

(2) The Commissioners may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Commissioners such reasonable charges as the Commissioners may from time to time prescribe.

(3) The Commissioners may compound with any person with respect to the payment of the charges prescribed under paragraph (2) above.

(a) 1966 c.28; section 37(3) was repealed by the Transport and Works Act 1992 (c.42), Schedule 4 (Part II).

(b) 1964 c.40

(4) (a) The Commissioners may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring him within 28 days to remove the mooring so as to enable the Commissioners to provide moorings in accordance with paragraph (1) above.

(b) The Commissioners shall offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by them under paragraph (1) above as soon as such mooring has been laid down.

(c) If any person fails to comply with a notice given by the Commissioners under this paragraph, the Commissioners may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(5) (a) The Commissioners may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, renew, use and have existing and future moorings, for vessels in the harbour.

(b) Nothing in any such licence shall entitle a person to place, lay down, maintain, renew or use and have any mooring on land not owned or leased by him or by the Commissioners or in which he has no appropriate interest.

(c) Any such licence shall be valid only for a period of one year commencing with the date on which it is granted.

(d) The Commissioners may charge for such a licence such reasonable fee as the Commissioners may from time to time prescribe.

(6) Any person who—

(a) intentionally obstructs any person acting under the authority of the Commissioners in setting out moorings;

(b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof;

(c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Commissioners under this article; or

(d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Commissioners under this article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) If any person commits an offence under paragraph (6)(d) above, the Commissioners may remove the mooring in question and recover from that person the expenses incurred in doing so.

(8) In this article “mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels.

Aids to navigation

46.—(1) In addition to their powers under section 201 of the Merchant Shipping Act 1995 (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the Commissioners may erect or place, alter, discontinue or remove aids to navigation in any place adjacent to the harbour.

(2) The Commissioners shall not exercise the powers of paragraph (1) above without the approval of the Trinity House.

Vessels not to anchor within harbour without consent

47. — No vessels shall without the consent of the Commissioners or their harbour master anchor within the harbour.

Power to dredge

48. — The Commissioners, as may appear to them to be necessary or desirable for the purposes of the harbour undertaking, may deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the harbour and the approaches thereto, and may blast any rock in that area, and they may use, appropriate or dispose of the materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995) from time to time dredged by them.

Repair of landing places, etc.

49. —(1) In this article, “relevant feature” means any landing place, jetty, embankment, structure or other work in the harbour or on land immediately adjoining the waters of the harbour other than one under the control or management of the Commissioners.

(2) The Commissioners may by notice require the owner or occupier of a relevant feature which in the opinion of the Commissioners is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbour; or
- (b) a hindrance to the navigation of the harbour,

to remedy its condition to the Commissioners' reasonable satisfaction within a reasonable time (not being less than 21 days) specified in the notice.

(3) If a person to whom notice is given under this article fails without reasonable excuse to comply with the notice within the time stated in the notice or such other time as the Secretary of State on an appeal may substitute therefor—

- (a) he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) the Commissioners may carry out the work required by the notice and may recover the expenses of so doing from the person on whom the notice was served.

(4) A notice under this article shall have annexed to it a copy of this article.

(5) A person aggrieved by a notice served by the Commissioners under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal to the Secretary of State against the notice.

(6) An appeal under paragraph (5) above shall be made by notice in writing stating the grounds of the appeal.

(7) A person who appeals under paragraph (5) above shall give to the Commissioners notice of his appeal accompanied by a copy of his statement of appeal; and the Commissioners shall, within 21 days of receipt of the notice, be entitled to furnish to the Secretary of State their

observations on the appeal.

(8) On an appeal under paragraph (5) above, the Secretary of State shall either quash the notice, modify its requirements or dismiss the appeal.

Power with respect to disposal of wrecks

50. —(1) In its application to the Commissioners, section 252 of the Merchant Shipping Act 1995 (which confers on bodies which are harbour authorities within the meaning of that Act powers with respect to any vessel sunk, stranded or abandoned in, or in or near any approach to, any harbour or tidal water in such manner as to be an obstruction or danger to navigation) shall have effect in relation to the harbour and the approaches thereto in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting his liability, the Commissioners may recover from the owner of any vessel in relation to which they have exercised their powers under the said section 252 any expenses reasonably incurred by them under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) (a) Except in a case which is in the opinion of the Commissioners a case of emergency, paragraph (2) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on them by the said section 252, other than the power of lighting and buoying, the Commissioners have given to the owner of the vessel not less than 48 hours' notice of their intention to do so.

(b) If before the notice expires the Commissioners receive from the owner counter-notice in writing that he desires to dispose of the vessel himself, he shall be at liberty to do so; and the Commissioners shall not exercise the powers in the said section 252 in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to him by the Commissioners.

(4) Notice under paragraph (3) above to the owner of any vessel may be served by the Commissioners either by delivering it to him or by sending it to him by registered post or the recorded delivery service addressed to him at his last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Commissioners, or is not in the United Kingdom, by displaying the notice at the office of the Commissioners for the period of its duration.

(5) In this article "owner", in relation to any vessel, means the person who was the owner of the vessel at the time of the sinking, stranding or abandonment thereof.

(6) The powers conferred on the Commissioners by this article shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks within the harbour and the approaches thereto.

Removal of obstructions other than vessels

51. —(1) The Commissioners may remove anything, other than a vessel, causing or likely to

become an obstruction to, or cause interference with, navigation in any part of the harbour or any approach thereto and may take such steps as appear to them to be appropriate to prevent or minimise such obstruction or interference.

(2) If anything removed by the Commissioners under paragraph (1) above is so marked as to be readily identifiable as the property of any person, the Commissioners shall, within 28 days of its coming into their custody, give written notice to that person stating that, upon proof of ownership to the reasonable satisfaction of the Commissioners and payment of any reasonable expenses incurred by the Commissioners under paragraph 2 of this article, possession may be re-taken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served) and, if possession of the thing removed is not so retaken, it shall at the end of that period vest in the Commissioners.

(3)(a) Notwithstanding the provisions of paragraph (2) above the Commissioners may, at such time and in such manner as they think fit, dispose of anything removed under paragraph (1) above which is not so marked as to be readily identifiable as the property of any person or which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(b) If anything disposed of by the Commissioners under this paragraph is sold, the Commissioners may retain out of the proceeds of sale any expenses incurred by them under this article, and any surplus—

(i) shall be paid to any person who within three months from the time when the thing came into the custody of the Commissioners proves to the reasonable satisfaction of the Commissioners that he was the owner thereof at that time; or

(ii) if within the said period no person proves his ownership at the said time, shall vest in the Commissioners.

(4) If the proceeds of sale of anything removed under this article are insufficient to reimburse the Commissioners for the said expenses, or there is no sale because the thing is unsaleable, the Commissioners may recover the deficiency, or, where there is no sale, the whole of the expenses, from the person who was the owner at the time when the thing removed came into the custody of the Commissioners or who was the owner at the time of its abandonment or loss.

Licensing of watermen and vessels

52. — (1) The Commissioners may licence such watermen and vessels as the Maritime and Coastguard Agency approve and authorise them to licence, on such terms and conditions and for such reasonable licence fee as the Commissioners think fit (acting in accordance with any guidance from the Maritime and Coastguard Agency).

(2) Any person who contravenes or otherwise fails to comply with any licensing regime introduced under paragraph 1 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Saving for Trinity House

53. — Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Crown Rights

54.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or 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 paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for existing Byelaws etc.

55. — On or after the new constitution date any byelaw, regulation, licence or consent made, issued or granted by the Authority in relation to the transferred [undertaking] and in force immediately before that date, shall, notwithstanding the repeal of the Act of 1890 continue to have effect.

Amendment of the Order of 1988

56. —From the new constitution date Article 2 (Interpretation) of the Order of 1988 shall be amended as follows:

(a) The definition of "The Order of 1890" shall be deleted and replaced in its entirety with the following wording "'The Order of 201[]' mean the St Mary's Harbour Revision Order 201[](a)' The aforementioned footnote (a) shall be deleted and replaced in its entirety with the following wording 'SI 201[]/[]'.

(b) The definition of "The Undertaker" shall be deleted in its entirety after the word 'means' and the deleted wording replaced with "the St Mary's Harbour Commissioners constituted under the Order of 201[]".

(c) The definition of "The Harbour" shall be amended to delete the number '1890' and replace it with the number '201[]'".

Amendment of the Order of 2007

57. — From the new constitution date Article 2 (Interpretation) of the Order of 2007 shall be amended as follows:

(a) The definition of "The Order of 1890" shall be deleted and replaced in its entirety with the following wording "'The Order of 201[]' mean the St Mary's Harbour Revision Order 201[]

(e) The aforementioned footnote (e) shall be deleted and replaced in its entirety with the following wording 'SI 201[]/[]'.

(b) The definition of "harbour" shall be amended to delete the number '1890' and replace it with the number '201[]'.

(c) The definition of "harbour master" shall be amended to add the words 'or under the Order of [201[]]' at the end of the definition after the number '1847'.

(d) The definition of "the undertaker" shall be deleted in its entirety after the word 'means' and the deleted wording replaced with "the St Mary's Harbour Commissioners constituted under the Order of 201[]".

Revocation

58. —On the new constitution date the enactment mentioned in the first and second columns of Schedule 3 to this Order shall be revoked to the extent specified in the third column of that Schedule.

Signed by authority of Marine Management Organisation

[Name]
Chief Executive Officer
An authorised employee of the
Marine Management Organisation.

[Date] 201[X].

SCHEDULES

SCHEDULE 1

Article 12

FORM OF DECLARATION BY PERSONS APPOINTED COMMISSIONERS

I, [] do solemnly declare (1) that I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a Commissioner of the St Mary's Harbour Commissioners by virtue of the St Mary's Harbour Orders 1988 to 201[]; (2) that I have read and understood the provisions of paragraph 16 (disclosure of financial and other interests) of Schedule 2 to the St Mary's Harbour Revision Order 201[] and that I will comply with the requirements of that paragraph, and in particular that:

- (a) I have disclosed to the Chairman of the Commissioners details of every such financial or other interest, and
- (b) I will in future notify the Chairman of any alteration in those interests, or any new financial or other interest which I may acquire.

Made and signed on theday of
..... signature

Witnessed by the Chairman of the St Mary's Harbour Commissioners
..... signature

SCHEDULE 2

Article 15

INCIDENTAL PROVISIONS RELATING TO COMMISSIONERS

Appointment of chairman and vice-chairman of Commissioners

1. — There shall be a chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under articles 6 or 7 above from among their number.
2. — The Interim Chairman is deemed appointed by virtue of this Order and subject to paragraph 7 below, and unless he resigns his office as chairman or ceases to be a member, continue in office as chairman until one year from the new constitution date..
3. — Subject to paragraph 7 below, every chairman subsequently appointed under paragraph 1 above shall, unless he resigns his office as chairman or ceases to be a Commissioner, hold office for a period not exceeding three years.
4. — There shall be a vice-chairman of the Commissioners who shall be appointed by those of the Commissioners who are appointed under articles 6 or 7 above from among their number.
5. — The first vice-chairman appointed under paragraph 4 above shall, subject to paragraph 7 below, and unless he resigns his office as vice-chairman or ceases to be a Commissioner, continue in office as vice chairman until his initial term of office as a Commissioner has expired.
6. — Subject to paragraph 7 below, every vice-chairman subsequently appointed under paragraph 4 above shall, unless he resigns his office as vice-chairman or ceases to be a Commissioner, hold office for a period not exceeding three years.
7. — If those of the Commissioners who are appointed under articles 6 or 7 above are satisfied that the chairman or vice-chairman should cease to hold his office as such, they may terminate his office as such

and appoint another Commissioner to be the chairman or vice-chairman during the remainder of the term for which the former chairman or vice-chairman was appointed.

8. — (1) On a casual vacancy occurring in the office of chairman or vice-chairman of the Commissioners, the vacancy shall be filled by those of the Commissioners who are appointed under articles 6 or 7 above at a meeting held as soon as practicable after the vacancy occurs.

(2) A Commissioner appointed under this paragraph to fill a casual vacancy in the office of chairman or vice-chairman shall, unless he resigns that office or ceases to be a Commissioner, hold that office during the remainder of the term for which the chairman or vice-chairman whom he replaces was appointed.

Meetings of Commissioners

9.—(1) The first meeting of the Commissioners after the new constitution date shall be convened as soon as practicable by the chief executive for such date as he may fix; and he shall make arrangements for notice of that meeting to be sent by post to each of the other Commissioners.

10.—(1) Subject to subparagraph (2), the Commissioners shall meet at least six times in each year.

(2) In addition to the meetings held under subparagraph (1), the Commissioners shall hold an annual consultative meeting to which members of the public shall be admitted.

11.—(1) Meetings of the Commissioners may be held and conducted in such a way that Commissioners who are not present together at the same place may by electronic means attend and speak and vote at it; and any director attending a meeting by electronic means shall be counted in the quorum for that meeting.

(2) For the purposes of subparagraph (1) electronic means has the same meaning as it has for the purposes of section 360A of the Companies Act 2006(a).

Vacation of office by Commissioners

12. — A Commissioner (other than the chief executive or harbour master) may resign his office at any time by notice in writing given to the chairman of the Commissioners or, if that Commissioner is the chairman, the vice chairman.

Reappointment of Commissioners

13. — (1) Subject to the provisions of this Schedule, a vacating Commissioner shall be eligible for reappointment as a Commissioner unless he has been disqualified from office under article 13 above.

(2) A vacating appointed Commissioner shall not be eligible for reappointment as a Commissioner where, immediately before the date in question, he has held office for three consecutive terms unless he is the chairman of the Commissioners.

(3) A chairman of the Commissioners who is an appointed Commissioner shall not be eligible for reappointment as a Commissioner where, immediately before the date in question, he has held office as a Commissioner for four consecutive terms.

(4) For the purposes of this paragraph, "term" does not include-

(a) a term referred to in article 11 above;

(b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article 10 above;

(5) In this paragraph "appointed Commissioner" means a Commissioner appointed under article 6 or 7 above.

Reappointment of chairman

14. — (1) A chairman of the Commissioners shall not be eligible for reappointment as the chairman where, immediately before the date in question, he has served as chairman for three consecutive terms.

(2) For the purposes of this paragraph, "term" does not include-

(a) a term served by the Commissioner as chairman under paragraph 1 or 2 above where that term is less than 3 years;

(b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy in the office of chairman under paragraph 8 above.

Committees

15. — The Commissioners may, consistently with their duties and subject to such conditions as they think fit, delegate any of their functions (other than the functions set out in subparagraphs (a) to (f) of paragraph 9B of Schedule 2 to the Harbours Act 1964(a) to a committee of the Commissioners.

Proceedings of Commissioners and committees

16. — The acts and proceedings of the Commissioners, or of any committee of the Commissioners, shall not be invalidated by any vacancy in their number or by any defect in the appointment, or the qualification for appointment, of any person as a Commissioner, or as chairman or vice-chairman, of the Commissioners or committee.

17. — The quorum required for a meeting of the Commissioners shall be five.

18. — (1) If a Commissioner has any interest, direct or indirect-

(a) in any contract or proposed contract to which the Commissioners are or would be a party or is a director of a Commissioners or body with which the contract or proposed contract is made or proposed to be made; or

(b) in any other matter with which the Commissioners are concerned,

he shall declare that interest.

(2) If a Commissioner is present at a meeting of the Commissioners or of any committee of the Commissioners at which a contract or other matter in which he has an interest is to be considered he shall-

(a) as soon as is practicable after the commencement of that meeting disclose his interest;

(b) not vote on any question with respect to that contract or matter; and

(c) withdraw from the meeting-

(i) at any time if the Commissioners present by resolution require him to do so; and

(ii) while a decision on that contract or matter is being made.

(3) This paragraph shall not apply to any interest-

(a) which a Commissioner has in respect of the payment to the Commissioners of harbour dues;

(b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;

(a) Paragraph 9B was inserted by the Transport and Works Act 1992 (c. 42), section 62(1) and Schedule 3, paragraph 9.

(c) which a Commissioner has as an employee of a public utility undertaking or as a shareholder, not being a director of a Commissioners, unless he possesses more than five per cent of the issued share capital of that Commissioners; or

(d) which the Commissioners present at the meeting by resolution declare to be too remote.

19. — The person for the time being holding office as vice-chairman shall have and may exercise in the absence or incapacity of the chairman all the functions of the chairman.

20. — If at any meeting of the Commissioners neither the chairman nor the vice-chairman are present the Commissioners present at the meeting shall choose one of their number to be the chairman of the meeting.

21. — (1) Every question at a meeting of the Commissioners or of a committee of the Commissioners shall be decided by a majority vote of the Commissioners present and voting.

(2) If at any meeting of the Commissioners or of a committee of the Commissioners there is an equality of votes on any question the chairman of the meeting shall have a second or casting vote which he may exercise for or against the status quo.

Authentication of seal and other documents

22. — (1) The application of the seal of the Commissioners shall be authenticated by the signature of the chairman of the Commissioners or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the chief executive of the Commissioners or some person authorised by the Commissioners to act in his place in that behalf.

(2) The Commissioners may authorise' a person to act instead of the chief executive under this paragraph whether or not the chief executive is absent or incapable of acting.

(3) Any notice, licence or other document given or issued by the Commissioners shall, unless the contrary intention is expressed, be sufficiently authorised if signed by the chief executive of the Commissioners or a duly authorised officer of the Commissioners.

Remuneration of Commissioners

23. — The Commissioners may pay to the chairman and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

Appointment of chief executive and other persons

24. — The Commissioners shall appoint a chief executive and such other persons as from time to time they think necessary or desirable for and incidental to the performance of their functions and pay to them such remuneration as the Commissioners think fit.

General

24. Subject to the provisions of this Schedule, the procedure and business of the Commissioners and of any committee of the Commissioners shall be regulated in such manner as the Commissioners may from time to time determine.

SCHEDULE 3 REVOCATION

Article 58

Number	Short title	Extent of revocation
c. xcvi.	St Mary's (Scilly) Pier Order 1890 confirmed by the Pier and Harbour Confirmation (No. 4) Act 1890 (a)	The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of the Duke of Cornwall, establishes St Mary's Harbour Commissioners ("the Commissioners") as the statutory harbour authority for St Mary's Harbour, Scilly ("the Harbour"), in the place of the Duke of Cornwall.

The Order provides for:

1. The constitution of the Commissioners and the appointment of Commissioners.
2. The establishment of an advisory body consisting of Harbour stakeholders with which the Commissioners are required to consult on material matters.
3. An increase in the Harbour limits to include the land (covered by water) near Porthloo Slip, an additional seaward area between Newman Rock and Taylors Island and a small amount of additional land necessary for operational harbour purposes.
4. Modernised powers of management and control of the Harbour to vest in the Commissioners including provisions relating general and special powers of direction, the making of byelaws, navigational safety, conservation, dredging, moorings and the levying of charges.
5. Powers to vest in the Commissioners which include the power to borrow, to establish a reserve fund, to develop or dispose of land, to grant tenancies and to incorporate companies limited by shares or guarantee.

The Order repeals the St Mary's (Scilly) Pier Order 1890 and amends the Isles of Scilly (Pilotage) Harbour Revision Order 1988 and the St Mary's (Isles of Scilly) Harbour Revision Order 2007.

(a) 1890 c. xcvi.

STATUTORY INSTRUMENTS

[201X] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The St Mary's (Isles of Scilly) Harbour Revision Order [201X]

Made - - - - []

Laid before Parliament []

Coming into force - - []