

**2015 No. 000**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Poole Harbour (Works) Revision Order 2015**

*Made* - - - - - *12th June 2015*

*Laid before Parliament* *2015*

*Coming into force* - - - *10th July 2015*

**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation

**PART 2**

**WORKS**

3. Power to construct, etc., works
4. Power to deviate
5. Subsidiary works
6. Period for completion of works
7. Works to be within the Borough of Poole
8. Power to dredge
9. Obstruction of works
10. Provision against danger to navigation
11. Abatement of works abandoned or decayed
12. Survey of authorised works
13. Permanent lights on authorised works
14. Lights on tidal works during construction, etc.
15. Defence of due diligence

**PART 3**

**MISCELLANEOUS AND GENERAL**

16. Crown rights
17. Saving for Trinity House
18. For the protection of the Environment Agency

19. Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010

The Poole Harbour Commissioners have 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 that section, 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.

## PART 1 PRELIMINARY

### **Citation and commencement**

1.—(1) This Order may be cited as the Poole Harbour (Works) Revision Order 2015 and shall come into force on 10th July 2015.

(2) The Poole Harbour Act 1914(f), the Poole Harbour Revision Order 1999(g), the Poole Harbour Revision Order 2001(h), the 2012 Order and this Order may be cited together as the Poole Harbour Act and Orders 1914 to 2015.

### **Interpretation**

2.—(1) In this Order—

“the 2012 Order” means the Poole Harbour Revision Order 2012(i);

“the authorised works” means the works authorised by this Order, or any part of such works;

“Chart Datum” is 1.4 metres below Ordnance Datum and “Ordnance Datum” means the datum line or mean sea level to which all heights are referred in the Ordnance Survey;

“the Commissioners” means the Poole Harbour Commissioners;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections (numbered sheets HRO1 to HRO5) prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “The Poole Harbour (Works) Revision Order 2015 plans and sections” of which one copy has been deposited at the offices of the Marine

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- (a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(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 1), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2 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 Schedule 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) See 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.
- (f) 1914 c.clv.
- (g) S.I. 1999/403.
- (h) S.I. 2001/2820.
- (i) S.I. 2012/1777.

Management Organisation and the other at the principal office of the Commissioners at 20 New Quay Road, Hamworthy, Poole, Dorset BH15 4AF;

“the harbour” has the same meaning as in the 2012 Order;

“harbour premises” means the quays, piers, landing places and all other works, land and buildings for the time being vested in, or occupied or administered by, the Commissioners as part of their harbour undertaking;

“harbour undertaking” means the undertaking of the Commissioners authorised by the Poole Harbour Act and Orders 1914 to 2015;

“land” includes land covered by water, any interest in land or rights in, to or over land;

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

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

“limits of deviation” means the limits of deviation shown on the deposited plans; and

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

(2) All heights, widths, depths and other measurements (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such height, width, depth or other measurement.

(3) References in the Poole Harbour Act and Orders 1914 to 2015 to the harbour undertaking of the Commissioners and to the harbour premises shall be construed for all purposes as including references to any works carried on and any land reclaimed by the Commissioners or any of its subsidiaries under or by virtue of this Order.

## PART 2

### WORKS

#### **Power to construct, etc., works**

3.—(1) Subject to the provisions of this Order, the Commissioners may (within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections) construct and maintain the whole or part of the following works on and in the bed and foreshore of the harbour, together with all necessary works and conveniences connected with or incidental to them—

#### Work No. 1

The construction of vertical steel piled quay walls and concrete capping, with heavy duty port surfacing to a height of 4.5 metres above Chart Datum on or within the area defined by straight lines drawn as follows:

- (a) a line between point D7 (North 50 42.441, West 001 59.349) and point D6 (North 50 42.434, West 001 59.302);
- (b) a line between point D6 (North 50 42.434, West 001 59.302W) and point D5 (North 50 42.434, West 001 59.142);
- (c) a line between point D5 (North 50 42.434, West 001 59.142) and point D9 (North 50 42.457, West 001 59.147); and
- (d) a line between point D9 (North 50 42.457, West 001 59.147) and point D8 (North 50 42.457, West 001 59.302).

#### Work No. 2

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 1 as lies within the limits of deviation as is required for, or in connection with, the authorised works.

#### Work No. 3

The construction of vertical steel sheet piled quay walls and concrete capping, with heavy duty port surfacing to a height of 4.5 metres above Chart Datum on or within the area defined by straight lines drawn as follows:

- (a) a line between point D9 (North 50 42.457, West 001 59.147) and point D4 (North 50 42.503, West 001 59.157);
- (b) a line between point D4 (North 50 42.503, West 001 59.157) and point D3 (North 50 42.500, West 001 59.180);
- (c) a line between point D3 (North 50 42.500, West 001 59.180) and point D2 (North 50 42.468, West 001 59.214);
- (d) a line between point D2 (North 50 42.468, West 001 59.214) and point D1 (North 50 42.467, West 001 59.309); and
- (e) a line between point D1 (North 50 42.467, West 001 59.309) and point D8 (North 50 42.457, West 001 59.302).

#### Work No. 4

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 3 as lies within the limits of deviation as is required for, or in connection with, the authorised works.

#### Work No. 5

The construction of vertical sheet piled quay walls and concrete capping, with heavy duty port surfacing to a height of 4 metres above Chart Datum on or within the area defined by straight lines drawn as follows:

- (a) a line between point A1 (North 50 42.687, West 001 59.290) and point B1 (North 50 42.670, West 001 59.225);
- (b) a line between point B1 (North 50 42.670, West 001 59.225) and point C1 (North 50 42.628, West 001 59.186);
- (c) a line between point C1 (North 50 42.628, West 001 59.186) and point C2 (North 50 42.524, West 001 59.162);
- (d) a line between point C2 (North 50 42.524, West 001 59.162) and point C3 (North 50 42.520, West 001 59.203); and
- (e) a line between point C3 (North 50 42.520, West 001 59.203) and point C4 (North 50 42.540, West 001 59.204).

#### Work No. 6

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 5 as lies within the limits of deviation as is required for, or in connection with, the authorised works.

#### Work No. 7

The construction of vertical steel sheet piled quay walls and concrete capping, with heavy duty port surfacing to a height of 4 metres above Chart Datum on or within the area defined by a straight line drawn between point C2 (North 50 42.524, West 001 59.162) and point D4 (North 50 42.503, West 001 59.157).

Work No. 8

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 7 as lies within the Port of Poole Marina and the limits of deviation as is required for, or in connection with, the authorised works.

Work No. 9

The construction of vertical steel sheet piled quay walls and concrete capping, with heavy duty port surfacing to a height of 4.5 metres above Chart Datum and tied back to existing port infrastructure on or within the area defined by a straight line drawn between point D6 (North 50 42.434, West 001 59.302) and point E1 (North 50 42.434, West 001 59.601).

Work No. 10

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 9 as lies within the Ro-Ro berths 2 and 3 and the limits of deviation as is required for, or in connection with, the authorised works.

(2) The Commissioners may construct and maintain the authorised works in such stages and along such lines within the areas described and within the limits of deviation, and employing such materials, as the Commissioners may from time to time deem appropriate.

(3) The Commissioners may from time to time within the limits of deviation alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised works and may maintain the same as altered, enlarged, replaced, relayed, extended or reconstructed.

(4) The authorised works and the bed, banks and shores of the harbour on which the authorised works are constructed and any land reclaimed shall for all purposes form part of the harbour undertaking of the Commissioners and of the harbour premises and all enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Commissioners or its officers, and all byelaws for the time being in force in relation to the harbour undertaking or the harbour premises, shall so far as relevant, apply to the authorised works and such bed, banks, shores and land and may be enforced by the Commissioners accordingly.

(5) In this article—

(a) a reference to a work identified by number shall be construed as a reference to the work of that number authorised by this Order; and

(b) map reference points specified shall be construed as references to WGS84 coordinates.

(6) In paragraph (5) “WGS84” means the World Geodetic System, revised in 1984 and further revised in 2004.

#### **Power to deviate**

**4.** Subject to the provisions of this Order, in constructing the authorised works the Commissioners may—

(a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation; and

- (b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 1.5 metres upwards or to any extent downwards,

as may be found necessary or convenient.

### **Subsidiary works**

5.—(1) Subject to the provision of this Order, the Commissioners may from time to time, within the limits of deviation, erect, construct, lay down, place, remove, replace, work or use and maintain whether temporarily or permanently all such works, conveniences, appliances and apparatus and take such measures as they from time to time consider fit for the purposes of or in connection with or incidental to the construction, maintenance and use of the authorised works, including, without prejudice to the generality of the foregoing, navigation marks and lights.

(2) In the course of erecting, constructing, laying down, placing, removing and replacing the authorised works the Commissioners may carry out construction activity, including the temporary placing of plant and equipment, within the waters adjoining the limits of deviation.

### **Period for completion of works**

6.—(1) If all the works authorised by article 3 are not completed within 50 years from the coming into force of this Order or such extended time as the Secretary of State may, on application of the Commissioners, allow, then on the expiry of that period, or such extended time (as the case may be), the powers conferred by article 3 for constructing and maintaining such works shall cease to have effect except as to so much of them as is then substantially commenced.

(2) Nothing in paragraph (1) shall affect the carrying out of works under article 5.

### **Works to be within the Borough of Poole**

7.—(1) The area of the works authorised by articles 3 and 5 shall be annexed to and incorporated within the Borough of Poole (to the extent that it is not already within the Borough of Poole) when all those works are completed or substantially completed with the exception (as the case may be) of works for which the powers conferred by article 3 have ceased to have effect in accordance with article 6(1).

(2) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(a) until the Commissioners have certified in writing to the Director General of Ordnance Survey that all the works authorised by articles 3 and 5 have been completed with the exception (as the case may be) of works for which the powers conferred by article 3 have ceased to have effect in accordance with article 6(1).

### **Power to dredge**

8.—(1) Subject to the provisions of this Order, the Commissioners may, for the purposes of constructing and maintaining the authorised works and to afford uninterrupted means of access to the authorised works and enabling their use at all states of the tide, from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the harbour within an area not exceeding 40 metres in width adjacent to the authorised works to a depth of not more than 9 metres below Chart Datum (unless the Secretary of State approves otherwise in writing).

(2) The Commissioners may as they think fit use, appropriate or dispose of any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(b)) from time to time dredged, taken or collected by them in the course of any such operations.

(3) No materials referred to in this article may—

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(a) 1841 c. 30.

(b) 1995 c. 21.

- (a) be disposed of in contravention of the provisions of any enactment relating to the disposal of waste; or
- (b) be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

### **Obstruction of works**

9. A person who, without lawful authority—

- (a) intentionally or recklessly obstructs any person acting under the authority of the Commissioners in setting out the lines of the authorised works; or
- (b) interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Provision against danger to navigation**

10.—(1) In case of injury to, or destruction or decay of, the authorised works the Commissioners must—

- (a) as soon as reasonably practicable notify Trinity House, the Maritime and Coastguard Agency and the United Kingdom Hydrographic Office; and
- (b) lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply with paragraph (1)(a) or (b), they shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **Abatement of works abandoned or decayed**

11.—(1) Where the authorised works are abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their own expense either to repair and restore the relevant part of the authorised works, or to remove the authorised works and restore their site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where works, consisting—

- (a) partly of authorised works; and
- (b) partly of works on or over land above the level of high water,

are abandoned or suffered to fall into decay and the works mentioned in sub-paragraph (b) are in such condition as to interfere or to cause reasonable apprehension that they may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include those works, or any portion thereof, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

### **Survey of authorised works**

12. The Secretary of State may at any time, if the Secretary of State deems it expedient to do so, order a survey and examination of the authorised works or of the site upon which it is proposed to

construct the works and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

#### **Permanent lights on authorised works**

**13.**—(1) After the completion of the authorised works the Commissioners must at the outer extremity of such work exhibit every night from sunset to sunrise such lights, shapes and signals and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1), they shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment to a fine.

#### **Lights on tidal works during construction, etc.**

**14.**—(1) The Commissioners must at or near any authorised works during the whole time of the construction of any tidal works exhibit every night from sunset to sunrise such lights, shapes and signals and take such other steps for the prevention of danger to navigation as the Secretary of State may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1), they shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment to a fine.

(3) In this article, “tidal works” means so much of the authorised works as are on, under or over tidal waters or tidal land below the level of high water.

#### **Defence of due diligence**

**15.**—(1) In proceedings for an offence under article 10, 13 or 14 it shall be a defence for the Commissioners to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Commissioners shall not, without the leave of the court, be entitled to rely on that defence unless, before the period of 7 clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### **Crown rights**

**16.**—(1) Nothing in this Order shall-

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the Commissioners to take, use, enter upon or in any manner interfere with, any land, hereditaments or rights of whatever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to-
  - (i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or



- (ii) 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)(b) may be given unconditionally or may be subject to such conditions and upon such terms as may be considered necessary or appropriate.

### **Saving for Trinity House**

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

### **For the protection of the Environment Agency**

18. Nothing in this Order or in any enactment applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(a) or any byelaw made under that Act or the Land Drainage Act 1991(b), in relation to anything done under or in pursuance of this Order.

### **Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010**

19.—(1) Regulation 73 of the Conservation of Habitats and Species Regulations 2010(c) [“the Habitats Regulations”] shall not apply to any planning permission which relates to the development authorised by this Order and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(d) for the class of development described as permitted development in Parts 11 and 17 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the works-

- (a) do not form part of the plan or project which was subject to an appropriate assessment in accordance with regulation 61 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Signed by authority of the Marine Management Organisation.

|      |  |
|------|--|
|      | <i>Name</i><br>Chief Executive Officer                       |
| Date | An authorised employee of the Marine Management Organisation |

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order empowers the Poole Harbour Commissioners (“The Commissioners”) as the harbour authority for Poole Harbour to construct and maintain works on and in the bed or foreshore of the harbour (defined in article 2(1)) within the limits of deviation on the deposited plans (so defined)

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(a) 1991 c.57; section 109 was amended by the Environment Act 1995 (c.25), section 120(1) and Schedule 22, paragraph 128, by the Marine and Coastal Access Act 2009 (c.23), section 82 and by S.I. 2013/755, article 4(1) and Schedule 2 Part 1, paragraphs 264 and 274(b).

(b) 1991 c.59.

(c) S.I. 2010/490.

(d) S.I. 1995/418..

(articles 3 and 4) and confers further powers as to subsidiary works relating to those works (article 5).

To the extent that they are not already, the works are to be within the Borough of Poole when they are completed or substantially completed (article 7).

The Order also empowers the Commissioners, for the purpose of constructing and maintaining the works, to dredge the bed, shores and channels of the harbour within a specified area (article 8).

The Order creates an offence of, without lawful authority, intentionally or recklessly obstructing the carrying out of the works, with a fine on summary conviction not exceeding level 4 on the standard scale (article 9).

Provision is made against danger to navigation (article 10) and for the abatement of works abandoned or decayed (11).

The Secretary of State may order a survey and examination of the authorised works (defined in article 2(1)) or of the site on which they are to be constructed (article 12).

Provision is made for the lighting of the authorised works permanently (article 13) and of tidal works (defined in article 14(3)) during construction (article 14).

A defence of due diligence is available to the Commissioners in respect of offences under articles 10, 13 and 14 (article 15).

A full regulatory impact assessment has not been provided for this instrument as there is no impact on business or charities or the voluntary sector.

The deposited plans and sections may be inspected during working hours at the principal office of the Commissioners at 20 New Quay Road, Hamworthy, Poole, Dorset BH15 4AF.