

202[X] No.

HARBOURS, DOCKS, PIERS AND FERRIES

**The Portreath, Portscatho and Portwrinkle Harbour
Empowerment Order 202[X]**

<i>Made</i> - - - -	0000
<i>Laid before Parliament</i>	0000
<i>Coming into force</i> - -	0000

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SCHEDULE

SCHEDULE 1: LIMITS OF THE HARBOURS

Cornwall Council applied for a harbour empowerment order in accordance with sections 16(1) and 16(2) of the Harbours Act 1964(a)(“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of section 16, has by an Order(b) under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 16(d) to the Marine Management Organisation(e)

The Marine Management Organisation, being satisfied as mentioned in section 16(5) and in exercise of the powers conferred by section 16(1), (3) and (6), makes the following Order.

PART 1 PRELIMINARY

Citation and commencement

1.—(1) This order may be cited as the Portsatho, Portreath and Portwrinkle Harbour Revision Order 202[X] and shall come into force on [DATE].

(2) This Order extends to England and Wales.

Interpretation

2.—(1) In this Order—

“the Act of 1847” means the Harbours Docks and Piers Clauses Act 1847(f);

“the Act of 1964” means the Harbours Act 1964;

“the Council” means Cornwall Council;

“harbours” means the harbours of Portreath, Portsatho and Portwrinkle the limits of which are defined in the Schedule (Limits of the Harbours);

“harbour facilities” means shipping, fisheries, marine, recreational, leisure, tourism and retail facilities (including buildings);

“harbour limits plans” means the Portreath Harbour Limits Plan, the Portsatho Harbour Limits Plan, and the Portwrinkle Harbour Limits Plans;

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

“harbour premises” means land above the level of low water and within the area shown shaded blue on the harbour limits plans for the time being vested in or occupied or administered by the

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- (a) 1964 c.40; section 16 was amended by SI 1970/1681, the Transport Act 1981 (c.56), Schedule 6, paragraphs 3, 4(1) and 14 and Schedule 12 (Part II), the Criminal Justice Act 1982 (c.48), sections 37 and 46, the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 2, S.I. 2006/1177, regulation 2 and the Schedule, Part I, the Planning Act 2008 (c.29), Schedule 2, paragraph 10 and the Marine and Coastal Access Act 2009, Schedule 21, paragraph 2. 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), Schedule 21, paragraph 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 16), see section 57(1).
- (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.
- (f) 1847 c.27

Council as part of the undertaking and occupied wholly or mainly for the purpose of activities there carried on; which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, car parks, sheds, buildings and all other works and conveniences, land and premises;

“the Harbour Revision Order” means the Cornwall Harbours Harbour Revision Order 20**;

“land” includes land covered by water (except where expressly stated otherwise);

“level of low water” means the level of mean low water spring tides;

“Portreath Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portreath Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Portscatho Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portscatho Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Portwrinkle Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portwrinkle Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Trinity House” means the Corporation of Trinity House of Deptford Strond(a);

“undertaking” means the harbours undertaking for the time being of the Council relating to any and or all of the harbours;

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

(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.

(3) Reference points specified in this Order shall be construed as references to longitude and latitude reference points

(4) Incorporation of provisions of Harbour, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 26, 28 to 31, 42, 48 to 50, 67, 70, 84 to 92, and 99 to 102), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) of the Act of 1847 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 “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 (combustible matters on quays, &c., to be removed) of the Act of 1847 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the

(a) The Corporation of Trinity House, Tower Hill, London, EC3N 4DH.

(b) ‘ship’ is defined in section 57(1) of the Harbours Act 1964 (c. 40) and includes a seaplane of the surface of the water and a hovercraft within the meaning of the Hovercraft Act 1968.

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,
 - (b) the expression “the undertakers” means the Council;
 - (c) the expression “the harbour, dock, or pier” shall mean the harbours, and includes those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
 - (d) 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;
 - (e) the reference in section 53 (penalty on shipmasters not complying with directions of the harbour master) 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.

PART 2

JURISDICTION

Harbours Jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 (Interpretation) of the Act of 1964, and the powers of the harbour master shall be exercisable within the harbours, the limits of which are described in the Schedule to this Order and shown on the harbour limits plans.

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbours referred to in the Schedule and the boundaries shown on the harbour limits plans the limits as shown on the harbour limits plans shall be deemed to be correct and shall prevail.

(3) For and incidental to the performance of their functions under this Order, the Council may employ and appoint harbour masters.

(4) The Council shall, within the harbours, be a local lighthouse authority within the meaning of sections 193 (general and local lighthouse authorities) and 201 (powers of harbour authorities) of the Act of 1995.

Amendment of the Cornwall Harbours Harbour Revision Order

5.— (1) The Harbour Revision Order is amended as follows—

- (a) in article 2;
 - (i) in the definition of “harbours” insert ‘Portreath, Portscatho, Portwrinkle,’ between ‘Penzance,’ and ‘Prince of Wales Pier’
 - (ii) between the definitions of “general reserve fund” and “harbours” insert;
 - (iii) “Harbour Empowerment Order” means the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20**
 - (iv) between the definitions of “Port of Truro reserve fund” and “Prince of Wales Pier Harbour Limits Plan” insert;
 - (v) “Portreath Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portreath Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of

the Marine Management Organisation and one copy at the principal office of the Council;

“Portscatho Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portscatho Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Portwrinkle Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portwrinkle Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[]” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

- (b) in article 50 after ‘disposal of waste’ insert on a new line;

“(4) The exemption in section 75 of the Marine and Coastal Access Act 2009 shall not apply to the harbours of Portreath, Portscatho and Portwrinkle.”

- (c) in Schedule 1 insert between ‘on the Penzance Harbour Limits Plan’ and ‘Prince of Wales Pier’;

“Portscatho

[The area within an imaginary line commencing at a point (50.178796, -4.971319) then in a straight line in a north easterly direction to a point at (50.178796, -4.971319) then following the level of high water along the coast back to the point of commencement (50.178796, -4.971319) and the harbour premises as shown shaded blue on the Portscatho Harbour Limits Plan.]

Portreath

[The area within an imaginary line commencing at a point (50.264042, -5.2920486) then in a straight line in a south westerly direction to a point at the northern end of the pier (50.263641, -5.292849) then following the seaward side of the pier along the level of highwater and then in a southerly direction to a point ([50.261376, -5.2918366]), then following the level of high water around the two tidal basins and turning basin (along the north eastern side) back to the point of commencement (50.264042, -5.2920486) and the harbour premises as shown shaded blue on the Portreath Harbour Limits Plan.]

Portwrinkle

[The area within an imaginary line commencing at a point (50.361240, -4.3149559) then following the level of high water around the northern edge of the harbour to the northern edge of quay and then in a straight line in an easterly direction to a point at the north eastern end of the quay (50.361187, -4.3140393) then following the seaward side of the quay along the level of highwater to a point ([50.361113, -4.3150200]), then in a straight line in a north east easterly back to the point of commencement (50.361240, -4.3149559) and the harbour premises as shown shaded blue on the Portwrinkle Harbour Limits Plan.]”

- (d) in Schedule 5, at the end insert on a new line;

Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 20[**]”

PART 4
SAVINGS

Crown Rights

6.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown, or
- (b) authorise the Council 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 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) the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the prior consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, the consent in writing of two or more of such of the regular officers of the said Duchy or other such persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863; or
 - (iii) 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 subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

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

Signed by authority of the Marine Management Organisation

Date Chief Executive Officer
An authorised employee of the Marine Management Organisation

SCHEDULE

Article 4

LIMITS OF THE HARBOURS

Portscatho Harbour

[The area within an imaginary line commencing at a point (50.178796, -4.971319) then in a straight line in a north easterly direction to a point at (50.178796, -4.971319) then following the level of high water along the coast back to the point of commencement (50.178796, -4.971319) and the harbour premises as shown shaded blue on the Portscatho Harbour Limits Plan.]

Portreath Harbour

[The area within an imaginary line commencing at a point (50.264042, -5.2920486) then in a straight line in a south westerly direction to a point at the northern end of the pier (50.263641, -5.292849) then following the seaward side of the pier along the level of highwater and then in a southerly direction to a point ([50.261376, -5.2918366]), then following the level of high water around the two tidal basins and turning basin (along the north eastern side) back to the point of commencement (50.264042, -5.2920486) and the harbour premises as shown shaded blue on the Portreath Harbour Limits Plan.]

Portwrinkle

[The area within an imaginary line commencing at a point (50.361240, -4.3149559) then following the level of high water around the northern edge of the harbour to the northern edge of quay and then in a straight line in an easterly direction to a point at the north eastern end of the quay (50.361187, -4.3140393) then following the seaward side of the quay along the level of highwater to a point ([50.361113, -4.3150200]), then in a straight line in a north east easterly back to the point of commencement (50.361240, -4.3149559) and the harbour premises as shown shaded blue on the Portwrinkle Harbour Limits Plan.]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of Cornwall Council relates to the harbours of Portscatho, Portreath and Portwrinkle and makes the Council the statutory harbour authority in respect of each of them.

The Order provides for:

(1) The Jurisdiction (article 4 and the Schedule) of the Council as the statutory harbour authority for the harbours including plans of the harbours (including the harbour premises) which can be inspected during working hours at the office of the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH and the principal office of the Cornwall Council [].

(2) The amendment of article 2 and Schedule 1 of the Cornwall Harbours Harbour Revision Order 20[] (which came into force on []) to apply its provisions to the harbours, so that in the future they will all be governed under the provisions of the Cornwall Harbours Harbour Revision Order 20[].

(3) The amendment of article 50 (dredging) of the Cornwall Harbours Harbour Revision Order so that the dredging exemption in section 75 of the Marine and Coastal Access Act 2009 does not apply to the harbours.

(4) The amendment of Schedule 5 of the Cornwall Harbours Harbour Revision Order 20[] to add a reference to this Order.

(5) Savings for Trinity House (article 7), the Crown (article 6).

A full impact assessment has not been prepared for this instrument as no, or no significant, impact is predicted on businesses, charities, voluntary bodies or the public sector.

An Explanatory Memorandum is available alongside the instrument on the UK legislation website at www.legislation.gov.uk.