

16 January 2024

**MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964 (AS AMENDED)**

**PROPOSED PORT OF LONDON AUTHORITY
HARBOUR REVISION ORDER 202[X]**

**STATEMENT IN SUPPORT OF APPLICATION FOR
ORDER BY:**

PORT OF LONDON AUTHORITY

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1 INTRODUCTION

- 1.1 This statement relates to the application by the Port of London Authority (“the Port Authority”) for the proposed Port of London Authority Harbour Revision Order 202[X] (“the HRO”). The Port Authority is the statutory harbour authority for the Port of London.
- 1.2 The application, made in a letter to the Marine Management Organisation (“the MMO”) dated 7 April 2020 is accompanied by:
- (a) A copy of the draft HRO;
 - (b) A copy of the marked up Port of London Act 1968 (“the 1968 Act”);
 - (c) This Statement;
 - (d) The fee for the application, paid to the MMO in the sum of £4,000; and
 - (e) Copies of the following local legislation, which are referenced in the draft HRO:
 - (i) Port of London (Consolidation) Act 1920;
 - (ii) Port of London and Midland Railway Act 1922;
 - (iii) Port of London Authority (Manner of Borrowing) Order 1968;
 - (iv) Medway Ports Act 1973;
 - (v) County of Kent Act 1981;
 - (vi) Essex Act 1987; and
 - (vii) Port of Tilbury (Expansion) Order 2019.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4 The HRO updates the regulatory powers of the Port Authority by amending the 1968 Act. The revision and modernisation of the powers and duties is sought in order to reflect, amongst other matters, the following: shortcomings in the powers hindering the Port Authority’s ability to comply with its duties, in particular the duty to ensure safe navigation of the Thames; the need to respond to and anticipate technological advances; the importance of adapting the Port Authority to developments in the commercial and financial world; a need to utilise modern security methodology; adaptation in accordance with new health and safety practices; and the necessity to amend the powers so as to be ‘fit for purpose’ post legislative change. These revised powers are therefore required to support the effective management of the Port of London, following review of the 1968 Act provisions as recommended by the Port Marine Safety Code 2016 and the accompanying Guide to Good Practice on Port Marine Operations 2018 (see further below).

2 PORT OF LONDON AUTHORITY AND THE PORT OF LONDON

- 2.1 The Port Authority is the statutory harbour authority for the tidal River Thames (“the River”) between Teddington and the outer Thames Estuary. Its statutory functions include

responsibility for conservancy, hydrographic surveying, dredging, managing the public navigation and controlling vessel movements.

- 2.2 The Port Authority is a trust port. Accordingly, it manages the River for the benefit of all river users and is obliged to turn its assets to account for the benefit of its statutory undertaking. As part of this obligation it must also minimise the conservancy and other charges payable under the 1968 Act by river users. The Port Authority is wholly funded by such charges and the other funds it generates: it does not receive any central or other Government subsidy.

3 POLICIES AND PLANS

National Policy Statement for Ports

- 3.1 In developing the draft HRO, the Port Authority has had regard to both national and local policy and plans and guidance relating to Ports. The policies set out in National Policy Statement for Ports relate to port development, which in the case of this proposed HRO are not directly relevant as the HRO is not authorising any development. However, the statement recognises in section 3.1 the important role that ports play in the UK economy, through freight movements, energy supplies tourism and leisure and wider economic benefits. Paragraph 3.1.7 recognises that ports continue to play an important part in local and regional economies, further supporting national prosperity through direct and indirect employment and port related activity.
- 3.2 It is against that nationally and locally recognised role and potential for development of future port operations supporting the use of the tidal river Thames for commercial and recreational use that the Port Authority currently operates the Port through its powers and duties in the 1968 Act. However, the shape of trade and traffic on the river is constantly changing and has done so considerably since 1968.

Port Marine Safety Code, A Guide to Good Practice on Port Marine Operations and Ports Good Governance Guidance

- 3.3 As a statutory harbour authority the Port Authority carries out its operations in accordance with the requirements of the Port Marine Safety Code, and ports guidance in A Guide to Good Practice on Port Marine Operations (2018) (“the Guide”) and Ports Good Governance Guidance (2018).
- 3.4 The executive Summary to the Department for Transport’s (DfT) Port Marine Safety Code dated November 2016 (“the Code”) explains in paragraph 7 that:

“The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured.”
- 3.5 The Code, as well as the supporting document A Guide to Good Practice on Port Marine Operations (2018) (“the Guide”), identify the measures that harbour authorities should undertake in order to comply with the Code. The Code sets out in several sections that amongst the key measures to secure safe and efficient port marine operations is the need to periodically review existing powers and duties to ensure they remain fit for purpose and to seek additional powers where required, including by use of a Harbour Revision Order. (see, eg bullets 1 and 2, paragraph 2, page 14). Notably, paragraphs 3.11 and 3.12 explain:

“3.11 Each harbour authority should keep their powers, and the extent of their jurisdiction, under review. A harbour empowerment order can be sought by an organisation that wishes to secure the statutory powers of a harbour authority.

Revising duties and powers

3.12 A harbour revision order can be used to amend statutory powers in a harbour authority’s local legislation. It can be used to achieve various outcome, one of which is to impose or confer additional duties or powers on a harbour authority (including powers to make byelaws).”

3.6 Chapter 3 of the Code also sets out the general duties to be discharged by a harbour authority for the safe and efficient operation of the port, including conservancy and environmental duties. As well as requiring a statutory harbour authority to review general powers and duties the Code also requires (as described in chapter 4) consideration of specific powers and duties, including for general and special directions (paragraphs 4.6 to 4.9), byelaw making powers (4.3 to 4.4), for the collection of dues (4.17 to 20); aids to navigation (4.21 to 4.24) and wrecks and abandoned vessels (4.25 to 4.31).

3.7 The Code is supported by the Guide which provides more detail on how ports can achieve compliance with the Code. The Port Authority has considered the details in the Guide which amongst other things sets out the need and the means for a statutory harbour authority to secure legislation which is fit for purpose. 1.6.1 states:

“All legislation, including byelaws and directions, should be reviewed on a regular basis, preferably annually, to ensure that it remains fit for purpose in changing circumstances. The Code provides that the requirements for marine safety will be determined by risk assessment. If the legal responsibilities cannot be discharged effectively using available powers and other measures, and that authority does not have the powers to rectify the situation, then it should seek the necessary additional powers. In addition, it is good practice to dispense with redundant or obsolete legal functions.”

3.8 The purpose of the proposed HRO is to give effect precisely to those requirements in the Code and the Guide to update the Port Authority’s 50-year old legislation. The Port Authority is promoting the HRO as part of its ongoing compliance with the requirements of the Code and Guide, to ensure it has relevant and effective duties and powers (including revisions to the powers to make byelaws and give directions as set out in paragraphs 1.7 to 1.9 of the Guide) sufficient scope to address the current and future management and safe operation of the port and its facilities for all users. The Port Authority has carried out a comprehensive review of its powers and duties under the Port of London Act 1968 having regard to its safety management system and after consideration seeks through the HRO to extend or modify existing powers and duties, create new powers where these are considered necessary for the safe and efficient operation of the port, and where any powers or duties are no longer relevant or necessary to achieve those ends, the HRO seeks to repeal them. Part 6 below explains in more detail the need and justification for each of the provisions in the draft HRO.

3.9 The proposed HRO also achieves the relevant purposes of the DfT’s Ports Good Governance Guidance (2018) (“the Guidance”) as it seeks to modify the constitutional arrangements of the Port Authority in Schedule 2 to the Port of London Act 1968 (as amended) consistent with Section 1 of the Guidance, address safety in section 4 of the Guidance and other duties, harbour dues and security (section 5 of the Guidance). As a trust port, a number of the amendments to the Port Authority’s powers and duties set out in the HRO would also secure improvements to the commercial accountability of the Port of London. These are further detailed in Part 6 below.

South East Marine Plan

- 3.10 The Port of London is within the inshore waters covered by the South East Marine Plan (“the Marine Plan”) adopted in June 2021. The Port Authority shares the Marine Plan’s vision for the south east inshore marine plan area in 2041, and that in particular, the “*Tidal Thames facilitates more sustainable passenger and freight transport than before with improved access, infrastructure, local employment and air quality, benefiting the Greater Thames area*” (first paragraph of 2.1 Vision).
- 3.11 The provisions in the HRO will assist the Port Authority in supporting the policies and objectives within the Marine Plan. For instance, the proposed changes to the Port Authority’s licensing regime (including modifications to the permitting of dredging) and clarifications over property interests will enable the Port Authority to better control development on or over the river to support the aims of the infrastructure policies SE-INF-1 and 2 and SE-AGG-1, to maintain or provide new infrastructure which facilitates marine activity, encourages shipping, tourism and leisure, construction and aggregates use. The modified permitting regime secured through the HRO will also support policy SE-DD-1 to enable the Port Authority to control works on the river which would otherwise be incompatible with dredging activity.
- 3.12 Policy SE-CO-1 seeks to make efficient use of space to support existing activities, and future sustainable social, environmental and economic activity through co-existence. The HRO would provide the Port Authority with more relevant powers to ensure that the current and future range of activities and uses on the tidal Thames could continue to be conducted safely and efficiently. For example the HRO will provide increased byelaw-making powers and improved powers to control certain activities which could affect safe navigation on the river, to improve lighting on river works and powers to require provision of certain safety equipment, all of which will be vital to allow increased or altered and varied use of space on the river in the future. This in turn serves to secure longer-term economic growth and prosperity for the Port of London, the wider South East and nationally.
- 3.13 The Port Authority supports policies SE-PS 1 to 4 which support current and sustainable future development compatible with existing port and harbour activities and duties and the safety of navigation, safeguard existing International Maritime Organization routeing systems, maritime routes and viable passenger services and promote sustainable coastal or short sea shipping. The stated policy aim for SE-PS-1 recognises “*the need to ensure safe navigation both within and in the approaches to ports, at present and in the future*”. As is explained above in relation to the Code and the Guide, the purpose of the HRO is to secure improved and more appropriate powers to assist the Port Authority in ensuring safe and efficient port operations fit for the twenty first century which fully align with the ports and shipping policies in the Marine Plan.
- 3.14 The draft HRO also provides the Port Authority with additional powers in relation to the environment, for instance through enhanced byelaw-making powers which reflect the Port Authority’s duties under s48A of the Harbours Act 1964. Such powers support the proposed policies on marine protection, biodiversity and tourism and recreation and will aid the Port Authority in playing its part to secure a port that meets the Vision for the plan area, where “*The environment is in a better state than before.*”

London Plan 2021

- 3.15 The importance of the Port of London and use of the river Thames as a vital part of London’s current and future economy and environment, and the potential for future growth is clearly set out in the London Plan 2021.

- 3.16 The proposed amended powers and duties in the HRO securing the finances and governance of the Port Authority and the safety of navigation on and the environment of the River fully align with the policies relating to the river set out in the London Plan. The revised powers in the HRO help to support the policies in the London Plan which recognises “the desirability of promoting and encouraging the use of the Thames, particularly for passenger and freight transportation” (see 0.0.5). The London Plan includes four dedicated strategic infrastructure policies (SI 14 – 17) which acknowledge the importance of waterways including the river Thames in the future sustainable development of the city. and as a multifunctional asset for transport and recreation, green infrastructure, important habitats, cultural and community activities, as well as providing environmental, economic and health and wellbeing benefits (see 9.14.2).
- 3.17 The revised powers of the Port Authority will also better enable it to provide a safer and more efficient port which can deliver more goods, services and people on the river in alignment with the policies of the London Plan. This aligns with policy GG5: Growing a Good Economy which recognises the role of waterways in the efficient movement of goods and people (paragraph 1.5.4); policy SD4: the Central Activities Zone, which acknowledges at paragraph 2.4.4 use and enjoyment of the Thames as part of the strategic functions of the Central Activities Zone (CAZ) in central London as well as the need to sustain and enhance the environment and heritage of the CAZ, recognising the strategic elements including the river itself (paragraph 2.4.9); and Policy SI 5 water infrastructure in relation to water quality and an improved water environment.
- 3.18 Policy SI 14 concerns the strategic role of waterways and requires local development plans to address the strategic importance of London’s waterways and seek to maximise the multifunctional social, economic and environmental benefits. Policy SI 15 water transport, supports protecting existing and developing new transport piers and facilitating waterborne freight including retention of safeguarded wharves. Policy SI 16 supports use and enjoyment of water-related cultural, educational and community facilities and new infrastructure provided this does not affect navigation and existing moorings and public access. Policy SI17 Protecting and enhancing London’s waterways encourages development in waterways which supports water-based uses and seeks to reduce pollution. Policies SI 8 Waste capacity and SI 10 Aggregates also support the need for sustainable transportation by water and ensuring available facilities including safeguarded sites such as wharves to assist in the distribution process. The policies in the London Plan which seek to support sustainable development within the existing and potentially expanded multiple uses of the River Thames, help to demonstrate why the Port Authority seeks to update its legislation to ensure that it can effectively carry out its functions, powers and duties to meet the current and potential expanding needs future of all river users.
- 3.19 In conclusion, the proposed HRO has therefore been drafted having considered and in conformity with relevant national policies and safety Code requirements which oblige the Port Authority to keep its statutory powers and duties under review, to ensure the safety of existing and future port users and operations, the vision and policies of the Marine Plan and the London Plan, to secure the protection and enhancement of the environment of, and support the growth of marine transport, leisure, tourism and commercial maritime activity in a safe, efficient and sustainable manner on the tidal Thames.

4 THE HARBOURS ACT 1964

- 4.1 Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers (now devolved to the MMO as described above) to make an order under that section (known as a harbour revision order) in relation to a harbour for achieving all or any of the objects specified in Schedule 2 to the 1964 Act.

- 4.2 Section 14(2)(a) of the 1964 Act provides that written application must be made to the MMO by either the authority engaged in improving, maintaining or managing the harbour or by a person appearing to have a substantial interest or a body representative of persons appearing to have such an interest. Section 14(2)(b) provides that the MMO must be:

“satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.

- 4.3 The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. In particular, the application meets the requirements of:

(a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained and managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.

(b) section 14(2) of the 1964 Act because:

- (i) the application is made upon the written application of the harbour authority and
- (ii) the making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

- 4.4 Subsection 2A of section 14 states:

“The objects for achieving all or any of which a harbour revision order may be made in relation to a harbour include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the harbour, or consolidating any statutory provisions of local application affecting the harbour; and subsection (2)(b) of this section does not apply to an order in so far as it is made for objects mentioned in this subsection.”

- 4.5 Many of the amendments to the 1964 Act relate to the objects set out in paragraph 3 to Schedule 2:

“Varying or abolishing duties or powers imposed or conferred on the authority by a statutory provisions of local application affecting the harbour, being duties or powers imposed or conferred for the purpose of— (a) improving, maintaining or managing the harbour; (b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or (c) regulating the carrying [on by others of activities relating to the harbour or of] activities on harbour land”;

or the objects set out in paragraph 4 of that schedule:

“imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above”.

- 4.6 The remaining amendments achieve the objects in the following paragraphs of Schedule 2 (and are picked up further in Part 4 of this statement):

paragraph 2: “Regulating (in whole or to a less extent) the procedure of, or of any committee of, the authority and fixing the quorum at a meeting of, or of any committee of, the authority”;

paragraph 6: “Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or for limited purposes) such limits as previously settled”;

paragraph 8A: “Enabling the authority to close part of the harbour or to reduce the facilities available in the harbour”;

paragraph 10: “Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised”;

paragraph 11: “Empowering the authority to levy at the harbour charges other than ship, passenger and goods dues or varying or abolishing charges (other than as aforesaid) levied by them at the harbour”;

paragraph 12: “Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid”;

paragraph 13: “Regulating the application of moneys in the nature of revenue received by the authority and securing that the financial affairs of the authority are properly managed”;

paragraph 16A: “Imposing or conferring on the authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features”; and

paragraph 17: “Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour”.

- 4.7 As this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required. The MMO has been consulted, however, on the proposals.

5 CONSULTATION

- 5.1 For six weeks between October and December 2019, the Port Authority engaged in early stakeholder input on a draft version of the HRO. The draft was published on its website alongside a Simple Guide (attached at Annex 1) to explain some of the proposed major changes to the 1968 Act. The Port Authority also published a news release announcing HRO consultation; <http://pla.co.uk/Legislation-update-to-reflect-changing-times-on-the-river>.
- 5.2 As well as being on the website, c. 290 stakeholders received the documents by post or email. These stakeholders included all riparian London Boroughs and Members of Parliament, and statutory undertakers (including the Environment Agency), alongside members of the public. The documents were also sent to Essex County Council, Kent County Council, Gravesham Borough Council and Southend-on-Sea Borough Council.

Stakeholders could send comments by email or post and an open house session was held on 14 November 2019 at which they could ask direct questions of the Port Authority.

5.3 Additionally, discussions were held between the Port Authority and certain organisations with particular interests, including:

- 5.3.1 The Crown Estate
- 5.3.2 Trinity House
- 5.3.3 Department for Transport
- 5.3.4 Port of Tilbury London Limited
- 5.3.5 Royal Yachting Association
- 5.3.6 The Company of Watermen & Lightermen of the River Thames
- 5.3.7 The Inland Waterways Association
- 5.3.8 Historic England
- 5.3.9 Thames Water Utilities Limited
- 5.3.10 Open Spaces Society
- 5.3.11 Metropolitan Police
- 5.3.12 Representatives of owners of moorings in the Thames.

5.4 Following the discussions and feedback from stakeholders, a number of amendments were made to the HRO. Those changes made in light of the consultation and before the application was submitted in April 2020 can be found set out in the Supplemental Guide attached to this Statement at Annex 2. This was also circulated to stakeholders by email and a further news release was published announcing submission of the HRO <http://pla.co.uk/Port-of-London-Harbour-Revision-Order-Submitted>.

5.5 Throughout, the Port Authority headlined the consultation via its social media channels, particularly LinkedIn and Twitter. The Port Authority also included updates in its weekly newsletter to subscribers.

6 NEED AND JUSTIFICATION FOR HRO

6.1 The proposed HRO would modernise and extend the powers of the Port Authority considered conducive to the efficient and economical management of the Port. An explanation of, and the need for, each substantive article in the HRO is set out below.

7 Article 4 Interpretation of the Act

7.1 Definitions in the 1968 Act:

7.1.1 “autonomous vessels”

A new definition has been added because of the addition of new section 138A.

7.1.2 “commercial and club boats”

This definition has been added to help clarify the definition of vessel and the definitions of master and owner in relation to boats used for a variety of commercial or club purposes.

7.1.3 **“craft”**

This definition has been repealed because all references to it in the Act have also been repealed.

7.1.4 **“crew”**

A definition of crew has been added to assist with the definitions of “passengers” and “pleasure vessel”.

7.1.5 **“the Custom House”**

This definition has been repealed. Dues are mostly now paid to Her Majesty’s Revenue and Customs online and so this definition is no longer appropriate.

7.1.6 **“customs officer”**

This definition has been repealed because references to a customs officer have been replaced by references to Her Majesty’s Revenue and Customs, to reflect the modern position.

7.1.7 **“drainage authority”**

This definition has been amended to reflect that of ‘drainage body’ in the Land Drainage Act 1991.

7.1.8 **“dredge”**

This new definition has been added. It was based on the existing definition in section 73. It has been expanded to cover different types of dredging and material in suspension. The latter wording follows the definition of “dredging” in section 66(2)(a) of the Marine and Coastal Access Act 2009.

7.1.9 **“dredging permission”**

This new definition is added as a consequence of amendments to section 73.

7.1.10 **“duties of customs or excise”**

This definition has been repealed because it is no longer used in the Act.

7.1.11 **“electronic communications line”**

This definition has been added to reflect the definition in paragraph 5 of the electronic communications code set out in Schedule 3A to the Communications Act 2003. References to electronic communications lines have been added in sections 61, 66 and 73 alongside references to other equipment of statutory undertakers, such as pipes or sewers, with the aim to bring the Act up to date in terms of modern technologies.

7.1.12 **“electronic communications network”**

This definition has been added to reflect the definition in s.32 of the Communications Act 2003. The term is used in section 73 to modernise the previous reference to the Postmaster General.

7.1.13 “electronic form” and “electronic means”

These definitions have been added to reflect the terms used in amendments being made to enable, for example, the service of documents by electronic means.

7.1.14 “explosive”

This has been added because of the addition of new section 133A (Fireworks).

7.1.15 “fireworks”

This has been added because of the addition of new section 133A (Fireworks).

7.1.16 “fish”

This definition has been repealed because it is no longer used in the Act.

7.1.17 “the former seaward limit”

This definition has been moved here from Schedule 1 of the Act to reflect the fact that it is not the current Port limit, which is what is being described in that Schedule. Additionally the text of the definition has been updated with values of latitude and longitude for greater certainty in determining the limits. An indicative map showing these coordinates can be found attached to this Statement at Annex 3.

7.1.18 “goods”

The definition has been widened to include sludge, waste and rubbish because in certain cases these items may be classed as goods and port rates may, accordingly, be levied on them.

7.1.19 “harbourmaster”

This definition has been extended so that it includes any person authorised by the Port Authority to carry out the functions of a harbourmaster. The type of people who will be authorised are the officers in Port Control and officers undertaking vessel inspections.

7.1.20 “houseboat”

This new definition has been added in order to help clarify the definition of vessel and the definitions of master and owner in relation to houseboats.

7.1.21 “hydrofoil vessel”

This definition has been varied so that it now includes hydrofoil vessels which were originally designed to be propelled but are no longer, for whatever reason, propelled.

7.1.22 “in writing”

This definition has been added to clarify that certain electronic forms of communication can be included in the meaning of ‘in writing’.

7.1.23 “licence application” and “licence to moor”

These definitions have been repealed to reflect the amendments to licencing regime under Part V.

7.1.24 “master”

This definition has been amended to reflect the new definitions of houseboat, commercial and club boats and autonomous vessels.

7.1.25 “the Minister”

This definition has been amended to reflect the changes to the ministerial functions made by a series of transfer of functions orders and to remove references to parts of the Act that have been repealed.

7.1.26 “mooring”

In this definition there has been inserted further wording to clarify that the term “mooring” includes any type of formal or informal mooring and would extend to fixing a vessel to e.g. another vessel not underway, or other structures, or features, trees, and so on. This has been clarified for the purposes of section 66A in particular and the new mooring permission regime generally.

7.1.27 “mooring permission”

This has been inserted because of the addition of new sections 66A, and consequential amendments set out in Sections 21, 35 and 39 and the provisions in sections 66A, 66B, 67, 69, 70, 70A, 90 and 137 for the new mooring permission regime.

7.1.28 “navigation”

This new definition has been added to reflect that navigation includes the movement of a vessel whether or not it is travelling between two locations, so long as it is not under tow. It will now include a vessel which undertakes a round trip starting and ending at the same location.

7.1.29 “owner”

This definition has been extended to cover any person with an interest in a vessel as well as the occupier or manager of a houseboat or commercial and club boats.

7.1.30 “permission application”

This definition has been added to reflect the amendments to Part V permitting regime.

7.1.31 “pleasure vessel”

This definition has been amended to reflect the meaning in the Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015.

7.1.32 “port rates”

This has been amended to cover all of the charges which the Port Authority levies on goods so as to ensure that the recovery and enforcement provisions in section 39 of the Act which refer to port rates relate to all such charges.

7.1.33 **“port stock”**

This definition has been repealed because it is no longer used in the Act.

7.1.34 **“river authority”**

This definition has been repealed because all bodies which were formerly river authorities have had their powers and duties taken over by the Environment Agency.

7.1.35 **“river duties of tonnage”**

This definition has been amended to update it with a reference to Her Majesty’s Revenue and Customs instead of Custom House.

7.1.36 **“the Surrey Canal”**

This definition has been repealed because the term is no longer used in the Act.

7.1.37 **“temporary permission”**

This definition has been added to clarify that some short term works permissions are deemed to be temporary permissions. This definition is then used in Part V.

7.1.38 **“terminal”**

This definition has been added because the term is used in the amended section 22.

7.1.39 **“terminal operator”**

This definition has been added because the term is used in the amended section 22.

7.1.40 **“Thames lighterman”**

The definition has been amended to clarify that it is a reference to lightermen within the Thames. Consequently, the heading to Part 8 of the Act has been amended to be “Thames Watermen and Thames Lightermen”.

7.1.41 **“Thames waterman”**

The definition has been amended to clarify that it is a reference to watermen within the Thames. Consequently, the heading to Part 8 of the Act has been amended to be “Thames Watermen and Thames Lightermen”.

7.1.42 **“tonnage by measurement”**

This definition has been repealed because the term is no longer used in the Act.

7.1.43 **“trader”**

This definition has been widened to include all goods which have been transported.

7.1.44 **“tug”**

This definition has been repealed because the term is no longer used in the Act.

7.1.45 **“vessel”**

This definition has been widened to ensure that any sort of craft which is used on the Thames can be regulated by the Port Authority.

7.1.46 “vessel licence”

This definition is included to enable easy reference to licences granted under s.124(1) of the Act.

7.1.47 “the vessel licensing area”

This has been amended because the vessel licensing area should be effectively the whole of the Thames, including the estuary, designated as inland waters, not just that part of the river to the former seaward limit. The definition of the licensing area has now been classed in terms of those parts of the Thames classed as C or D waters within regulation 3 of the Merchant Shipping (Categorisation of Waters) Regulations 1992 (SI 1992/2356) and MSN 1827(M) (which supersedes MSN 1776(M) which itself superseded MSN 1504 as referred to in the Regulations).

The change in the vessel licensing area means that operators of vessels that transit outside the former seaward limit, but are still within inland waters, will have the option of moving to the Port Authority’s vessel licensing regime from the Maritime and Coastguard Agency’s Coding regime. This may include vessels that regularly transit to the Crouch or the Blackwater, as these are accessible from Category D waters.

The Port Authority’s vessel licensing inspection regime is based on the Thames Freight Standard or Inland Waters Small Passenger Boat Code which both relate specifically to inland waters, rather than the Maritime and Coastguard Agency’s coding regime which is used across a wider range of water classifications.

7.1.48 “works”

This definition has had minor amendments to reflect the amendments to Part V permitting regime.

7.1.49 “works licence”

The definition of works licence has been replaced by a definition of works permission to reflect the amendments to the licencing regime under Part V. The definition explains that it includes a temporary permission unless that is expressly excluded.

7.1.50 “the Yantlet line”

This definition has been amended to reflect the fact that the London Stone North is now in the water and the Crow Stone is on the foreshore. The limits extend beyond these two stones on the same trajectory.

- 7.2 A new subsection (5) has been added to make clear that all latitude and longitude values used in the Act are stated by reference to the Geographical Coordinate System ETRS 1989 reference to the spheroid GRS 1980. This is to provide clarity as to what system of coordinates are used in the Act, and adjustments are made to reflect this in the various provisions of the Act referring to coordinates.

8 Article 5 Protection of members of the Port Authority

- 8.1 In line with DfT guidance in Ports Good Governance Guidance (2018), wording with similar effect to section 60 of the Commissioners Clauses Act is now incorporated in the 1968 Act

as a new section 4A. It exempts members of the Board from personal liability for their lawful actions as members of the Authority and provides for their indemnification by the Port Authority and for the Port Authority to take out insurance to cover this liability. This provision is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner and achieves the object of regulating the procedure of the Authority as provided for in paragraph 2 of Schedule 2 to the Harbours Act 1964.

9 Article 6 General duties and powers

- 9.1 A new subsection (2A) is added to section 5 making clear that the power to turn surplus resources to account includes investment, provided such investment is for either the direct or indirect benefit of the undertaking. This achieves the objects of regulating the application of moneys in the nature of revenue and securing the financial affairs of the Port Authority are properly managed set out in paragraph 13 of Schedule 2 to the Harbours Act 1964.

10 Article 7 Hydrographic surveys

- 10.1 Section 7 as amended extends the Port Authority's surveying function to the current seaward limit (at present this section refers to the former seaward limit) and into the estuary and approaches of the river Thames where regular surveys need to be undertaken because of the shifting sands. This meets the objects in paragraph 4 of Schedule 2 to the Harbours Act 1964 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour.

11 Article 8 Annual Report

- 11.1 Section 8 has been amended to remove the requirement to submit an annual report on the exercise of the Port Authority's functions to the Minister for laying before Parliament. This seems an unnecessary requirement which does not apply to other harbour authorities. The Port Authority will continue to be required like any other harbour authority to report to the Secretary of State under section 42 of the Harbours Act 1964.
- 11.2 Instead subsection (1) now contains an obligation for an annual report on the exercise of their functions to be published and made publicly available on the Port Authority's website or by other electronic means, without charge, and at their principal office. This will not include a statement of their accounts. That is now required to be published separately under section 59 (Accounts and audit). This amendment meets the objects in paragraph 2 of Schedule 2 to the Harbours Act 1964 to regulate the procedures of the Port Authority.

12 Article 9 Powers relating to land

- 12.1 Section 11(1) has been amended to make clear that the Port Authority has the power to acquire by agreement easements or other rights in land or licences to use land.
- 12.2 Subsection (2) is amended to allow the Port Authority to acquire easements or other rights in land compulsorily instead of acquiring the land outright.
- 12.3 Subsections (3B) to (3G) have been inserted in consequence of changes in the regime for permitting works (explained in relation to section 66 of the Act) and the new provisions for permitting moorings (contained in the new section 66A). Previously the grant of a works licence under section 66 conferred, as well as statutory authorisation for the work, a deemed property right to place and retain works on the riverbed. The new permitting regime for works (and for mooring) does not grant any property right and it is accordingly

necessary for the landowner to obtain a separate right. These provisions deal with the grant of such rights by the Port Authority (and subsection (3) is amended to give the Port Authority the statutory authority to grant such property licences).

- 12.4 In considering a request for such a licence, where such property licence is required in addition to a works or mooring permission, the Port Authority is under similar constraints as it was previously in relation to the grant of a works licence. First, subsection (3B) to (3C) provide the same criteria for assessing the consideration payable for the grant of the property right as previously applied under Section 67 in relation to the grant of a works licence. Any dispute about the amount of consideration is referred to arbitration.
- 12.5 Secondly, subsections (3D) to (3F) give a right of appeal in the event of a refusal to grant the necessary property right (or concerning the conditions upon which the right is proposed to be granted). The appeal is determined by the Secretary of State under the new Schedule 4 to the Act, in the same way as an appeal concerning a works or mooring permission.
- 12.6 Finally the new subsection (3G) addresses the position where consideration has been paid under subsection (3) for an interest or right referred to in subsection (3A) (i.e. an interest or right in connection with a works or mooring permission) but the works or mooring permission to which that interest or right relates is then revoked or terminated by the Port Authority. In that situation the former permission holder will be able to claim reimbursement of an appropriate proportion of that consideration subject to the Port Authority retaining any unpaid expenses etc..
- 12.7 The change will provide greater clarity around the processes undertaken by the Port Authority and will be a more transparent and appropriate split between the statutory consenting function and the property element. This amendment achieves the objects in paragraph 3(c) of Schedule 2 to the Harbours Act 1964 to vary powers to regulate the carrying on of activities by others relating to the harbour or of activities on harbour land.

13 Article 10 Application of landlord and tenant law

- 13.1 This new provision, section 11A, is also required in consequence of the changes made in the river works licensing regime. It disapplies the provisions of landlord and tenant law in relation to leases granted for the purpose of a works or mooring permission within the river. As explained at 12.3, previously the grant of a works licence under section 66 conferred, as well as statutory authorisation for the work, a deemed property right to place and retain works on the riverbed. There was, therefore, a minimal possibility that such property rights could be deemed to be leases and therefore be subject to landlord and tenant law. However, the necessary property rights will now be granted separately under section 11. Although such property rights will usually be licences, this new section 11A is required for the avoidance of doubt. This disapplication ensures that the change in the regime for granting property rights for river works does not result in any difference in security of tenure form that which holders of river works licences enjoy at present. The security of tenure provisions under landlord and tenant law do not apply in relation to river works under the present regime, and will not do so under the new regime.
- 13.2 The new section will ensure that the Port Authority is free to terminate any property right determined to be a lease for works or mooring within the river and remove the work or vessel when it is necessary to do so in the exercise of its statutory functions: in particular it will allow it to take action where required in the interest of river safety. It follows provisions which have been included in the legislation of other statutory undertakers to ensure that they are able to discharge their statutory functions.

13.3 This disapplication of general landlord and tenant legislation falls within the scope of section 14 (3) of the 1964 Act as a provision which is supplementary to and required to give full effect to the provisions of the Order which split the grant of interests in land from the works permitting regime. Whereas currently the grant of a works licence brings with it a right to use land to which landlord and tenant legislation does not apply, under the new regime the Port Authority will need to grant a separate right and interest in land to which landlord and tenant legislation might apply, in a way that is not compatible with the exercise of the Port Authority's statutory functions. Currently, it is not the Port Authority's intention to make available to any licensee greater or lesser property rights than those currently available under the present regime.

14 Article 11 Power to acquire securities, lend money and give guarantees

14.1 Section 13 is amended to give subsidiaries of the Port Authority the same financial powers as the Port Authority itself. The reason for this is that the Port Authority is providing assistance to companies or groups along the river and may want to do so via a subsidiary as opposed to the Port Authority itself. In the past it has had subsidiaries such as Port of London Properties limited, but it was limited to providing land in joint partnerships.

14.2 This meets the objective in paragraph 13 of Schedule 2 to securing that the financial affairs of the Port Authority are properly managed.

15 Article 12 Power to make certain charges

15.1 Section 21 has been modified to address certain gaps in the Port Authority's charging powers.

15.2 The amendments in subsection (1) allow for charges to be made in respect of cranes, rigs and other floating plant which remain within the limits without entering or leaving the limits and also in respect of goods which are transported within the limits without entering or leaving the limits. This provision supplements the scope of the power to charge goods dues under section 26 of the Harbours Act 1964. It will enable the Port Authority to levy charges on goods which are loaded in one part of the harbour limits and unloaded in another without leaving the harbour limits. This is something which the Port Authority may wish to do in the future since intra- port traffic makes the river busier and adds to the Port Authority's costs in maintaining navigational safety. As with the removal of charging exemptions explained in paragraph 18.3, this is desirable in ensuring that the Port Authority can charge all users of the Thames on a fair and equitable basis. The Port Authority consults annually on proposed future charges.

15.3 Subsection (2) widens the general power to make charges for services to make clear that the Port Authority has power to recover its costs in connection with the new power to grant property interests or rights in connection with a works or mooring permission under section 11(3).

15.4 The new subsection (4) allows the Port Authority to make total or partial exemptions, rebates or other arrangements in respect of the charges levied for the services under the terms of this section. It follows a similar provision in the Neath Harbour Revision (Constitution) Order 2009 (SI 2009/2207).

15.5 This achieves the objective in paragraph 11 of Schedule 2 to empower the Port Authority to levy charges other than ship, passenger and goods dues.

16 Article 13 Charges regulations

- 16.1 Subsection (1)(a) of section 22 is amended to allow the Port Authority's charges regulations to prescribe "how" a charge is to be paid.
- 16.2 Through amendments to subsection (1)(b), the scope of charging regulations which can be made under section 22 is amended to extend those required to provide information in relation to charges to include terminal operators and owners of a work to which a vessel on which charges are payable is moored. Consequential changes have also been made to subsection (1) to remove reference to exemptions from charging which have been repealed.
- 16.3 Subsections 1(b) and (c) are amended to clarify that information required under that subsection must be such information as is reasonably required by the Port Authority.
- 16.4 Subsection (4)(a) has been amended because it is thought unnecessary and onerous to have to publish extracts from the regulations with each schedule of charges when the regulations are themselves required to be published by the Port Authority under subsection 4(b) and subsection (5)(a) has been amended to remove reference to paragraph (a) of subsection 4.
- 16.5 This meets the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and to specify the persons by whom charges are to be paid.

17 Article 14 Arrangements with Her Majesty's Revenue and Customs

- 17.1 Section 23(2) is updated to refer to the current legislation under which the register of ships is maintained.
- 17.2 This achieves the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

18 Article 15 Payment of charges

- 18.1 A new subsection (2)(aa) has been added to section 35 clarify who is responsible for paying charges in relation to passengers.
- 18.2 A new subsection (3) has been added to identify the person liable to pay charges for works, dredging or mooring permissions or vessel licences.
- 18.3 Sections 27, 29, 30 and 33, and schedule 10 which contain various exemptions from charges, are repealed in their entirety. These statutory exemptions are not consistent with the modern requirement for a harbour authority to charge all users of the harbour on a fair basis reflecting changing circumstances without discriminating on the basis of historic exemptions. Exemptions can where appropriate be included in the Port Authority's charging schedule and in that way they can be varied as circumstances change.
- 18.4 This meets the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges and to specify the times at which and the persons by whom such charges are to be paid.

19 Article 16 Security for charges and consideration

- 19.1 Section 36 is being widened to allow the Port Authority to require financial security to be provided not just in respect of a charge which is to be incurred, but in respect of a liability to pay consideration to the Authority. The form of security is not specified but it should be sufficient to guarantee the obligation.

19.2 This fulfils the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

20 Article 17 Certificate of payment

20.1 The only amendments to section 37 are to refer to Her Majesty's Revenue and Customs.

20.2 This fulfils the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

21 Article 18 Entry on vessels

21.1 The reference in section 38(1) to the docks is deleted.

21.2 Subsection (2) which makes it an offence for a master of a vessel to fail to comply with a reasonable request for information by an officer of the Port Authority is expanded to cover making a false statement.

21.3 This meets the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

22 Article 19 Recovery and enforcement of charges and consideration

22.1 Section 39 has been widened to increase the Port Authority's enforcement powers in relation to river works and moored vessels. Subsection (2) has been amended and split into new subsections (2A) and (2B). The amendments allow the Port Authority to seize a work or vessel until the charges for the works or mooring permission, the consideration payable for use of land in respect of that work or mooring, consideration for and the costs of removal, storage and maintaining the work and the vessel have been paid. This power extends to any vessels moored to a work in respect of which charges or consideration have not been paid. As elsewhere the reference in this provision to a dock has been deleted.

22.2 New subsections (2D) and (2D) have been added to require a warrant to be obtained before the power contained in subsection (2B) is able to be exercised in relation to a houseboat.

22.3 Subsections (4) to (12) which authorise the Port Authority to sell detained goods or vessels have been amended in consequence of these changes. Subsection (4) has been amended to allow the sale of a work and references to a work are also now included in subsection (7) and to a work or vessel in subsection (12). However, a new subsection (5) introduces a safeguard qualifying the power of sale of a vessel, by providing that in a case where the vessel is not owned by the defaulting holder of a works or mooring licence, the power of sale is not to be enforced unless the owner of the vessel has not claimed ownership within 90 days of notification of the proposed sale.

22.4 A number of other changes have been made in the enforcement powers of this section.

22.5 Subsection (6) has been widened to cover any person, not just the master of a vessel, removing or attempting to remove, without the Port Authority's consent, goods or a vessel which have been detained.

22.6 Subsection (7) has been amended to allow the proceeds of sale to be applied to the costs of the sale and also the Port Authority's costs in seizing, removing pumping out, raising, maintaining or storing any work or vessel. Reference to the costs of sale has also been included in the power to recover costs in subsection (4). For example if the owner of a

work has not paid the relevant charge for a works permission at the time specified, the port authority is entitled to seize and detain that work until the charge has been paid, along with the costs incurred by the port authority in the seizure and detention. Upon giving not less than seven days' notice to the owner, the Port Authority has the power to sell that work under subsection (5). Subsection (7) then sets out how the proceeds of that sale are to be applied. First they are to be applied in payment of certain costs and expenses of the Port Authority. The wording added by article 19(8)(b) includes in this the costs of any attempted sale, sale or disposal which would include costs incurred in removing, pumping out any material from, raising, maintaining, mooring or storing the work. For example, if the relevant work is a jetty, the Port Authority could apply the proceeds of sale towards its costs in physically removing that jetty from the river and storing it. A further example would be a detained vessel and the relevant costs would be in pumping out water and then mooring it or storing it on land until it is sold.

- 22.7 A new subsection (13) clarifies that references to "vessel" include appurtenances, tackle and any chattels on or with it, but personal chattels are excluded based on the descriptions of "exempt goods" under section 9 of the Courts Act 2003 which cannot be seized by an enforcement office (bailiff, sheriff) in exercising a writ.
- 22.8 Finally, by way of a tidying up amendments, subsection 8(a) is being amended so that it refers to sums payable to Her Majesty's Revenue and Customs, subsection (11) so that it provides for a reasonable opinion to be required and the notice to be displayed at the principal office, and the original subsection (5) is being repealed. The latter is a saving for the Port Authority in respect of legislation which no longer applies and is therefore now redundant.
- 22.9 This achieves the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

23 Article 20 Refusal of customs clearance

- 23.1 The only amendment to section 40 is to refer to Her Majesty's Revenue and Customs.
- 23.2 This achieves the objective in paragraph 12 of Schedule 2 to secure the efficient collection of charges.

24 Article 21 Application of Port Authority's revenue

- 24.1 References to port stock in section 47(1)(b)(c) and (2) are repealed. There is no longer any port stock as it has all been repaid.
- 24.2 In addition, reflecting changes in accounting terminology this section has been amended to refer to profit and loss statements instead of revenue account.
- 24.3 This meets the objective in paragraph 13 of Schedule 2 to regulate the application of moneys in the nature of revenue and to securing that the financial affairs of the Port Authority are properly managed.

25 Article 22 Borrowing powers

- 25.1 The Port Authority's existing borrowing powers are prescribed and require ministerial approval to use methods and borrow for purposes not currently set out in the Act. Section 48 has been updated to provide a new general and unrestricted power to borrow, which will not need ministerial approval. It is based on precedent in other harbour legislation. It does not include a power to issue bonds, which it is considered is not required.

25.2 This achieves the objective in paragraph 10 of Schedule 2 to empower the Port Authority to borrow money with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.

26 Article 23 Miscellaneous rights of stockholders and others

26.1 In consequence of the more general powers to borrow substituted in section 48, and the repeal of the provisions relating to port stock and bonds, section 54 providing rights in relation to specific categories of loan has been amended to confer rights on lenders generally who have loans secured on the assets of the Port Authority.

26.2 This meets the objective in paragraph 10 of Schedule 2 to empower the Port Authority to borrow money with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised.

27 Article 24 Power to charge interest on capital

27.1 Section 56 imposes a 10 year limit (except with the consent of the Minister) on the period for which the Port Authority can charge to capital (as part of the cost of a work carried out by them) interest on money raised to pay for the work. It is proposed to remove this limitation. The Port Authority should be free to determine this on a commercial basis and it is not appropriate for this to be subject to ministerial control.

27.2 This achieves the objective in paragraph 13 of Schedule 2 to regulate the application of moneys in the nature of revenue and to secure that the financial affairs of the Port Authority are properly managed.

28 Article 25 Accounts and audit

28.1 Section 59(3) has been amended so that instead of specifying the qualifications required for an auditor of the Port Authority's accounts, it provides simply that an auditor must be eligible for appointment as a statutory auditor, as defined in section 1210 of the Companies Act 2006.

28.2 As explained in relation to Section 8 this section now includes an obligation to publish a report including a statement of the audited accounts of the Port Authority and any auditor's report on the accounts on their website or by other suitable electronic means and at their principal office. This replaces the previous requirement to publish a summary of the statement of audited accounts and the auditor's report in one or more daily newspapers. It widens the scope of the information to be published, but removes the unnecessarily onerous requirements to publish in a newspaper.

28.3 This meets the objective in 13 of Schedule 2 to secure that the financial affairs of the Port Authority are properly managed.

29 Article 26 Dredging and improvement

29.1 As the HRO adds a definition of "dredge" to the interpretation section (2(1)) of the Act, most of the former wording relating to the scope of dredging that appeared in section 60(1) has now been deleted as it is incorporated within the definition. The wording of the power to dredge in section 60(1) has therefore been simplified and refers only to dredging and improving the bed and banks of the Thames.

29.2 The Yantlet line now has significance only as an ownership boundary and the downriver limit of the port is out in the estuary. The proviso is in any case redundant as such matters are now being governed by an application for a marine licence.

29.3 This fulfils the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

30 Article 27 Protection in relation to dredging

30.1 In section 61(1) it is proposed that the compensation payable by the Port Authority for any damage to property or works arising from dredging or improvement of the bed or banks of the Thames should apply only to legally placed works which the Port Authority will be aware of. The reference to “licence” has been amended to “dredging permission” as the definitions in Part V of the Act have been changed (and see explanation in section 66 below).

30.2 In subsection (2) it is proposed twenty yards be changed to the metric figure: 18.28 metres.

30.3 Subsections (2)(b) and (c) have been deleted as no longer relevant, and instead additions have been made in subsection (2)(d) and subsection (3) to refer to electronic communications lines and sewers, and their undertakers. Definitions of “electronic communications line” and “electronic communications network” have accordingly been added to section 2(1).

30.4 Subsection (4) has been amended to refer to the Environment Agency which has replaced river authorities as the body having functions in relation for drainage works in main rivers.

30.5 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

31 Article 28 Works in the Thames

31.1 This article amends section 62 of the 1968 Act to make clear that the Port Authority must seek Trinity House’s approval before placing, permitting or requiring to be placed certain works in the Thames.

32 Article 29 Reclaiming creeks etc.

32.1 Section 65(1)(a) has been amended to make clear that the Port Authority must obtain the consent of the Crown in writing before the Port Authority exercises its powers under subsection (1) to reclaim creeks and other inlets and areas adjoining the Thames in relation to Crown land. In the light of that it has been agreed that the saving for land in front of land of the Crown in section 2(1)(b) is unnecessary and can be repealed. New subsection (2) provides a definition of “in front of” for clarity in relation to subsection (1)(b).

32.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

33 Article 30 Permitting of works

33.1 A number of changes are made to the works licensing regime under Part 5 of the Act, in order to bring it in closer alignment with the marine licensing regime under Part 4 of the Marine and Coastal Access Act 2009 (MCAA). First, whereas a works licence had previously granted a property right as well as statutory authority for the works to impede the public right of navigation, under the revised regime section 66 will confer only the statutory authority, leaving the property rights to be conferred separately. The section 66 consent will therefore correspond more closely to a land based planning permission or a marine licence, which avoids the inference that the decision-making process is influenced

in any way by the introduction of property matters into that process. Accordingly subsection 1(a) is amended to remove reference to “consideration” which is now reflected in the property right granted under section 11 and subsection 1(b) has been amended to make clear that a property licence will also be required before any works authorised by the permission under this section can be implemented. Subsection 1(a) also clarifies that a works permission will authorise the use as well as the construction of a river work and that the permission may include conditions as to termination.

- 33.2 Secondly, in the light of this, the description of the consent granted is changed from a “works licence” to a “works permission” distinguishing the consent from the property licence which will also now be required. The same approach has been adopted in relation to dredging licences and the newly introduced mooring permissions (section 66A). Thirdly, the process for obtaining works permissions (and dredging and mooring permissions) and for the control of works, dredging and mooring have been revised to reflect the more up-to-date and transparent powers in the MMO’s licensing provisions in Part 4 of the MCAA. As well as reflecting modern practice, it is considered that it will avoid confusion to bring the procedure for the two regulatory regimes into closer alignment. This will also make it easier for the Secretary of State to confirm a delegation of marine licensing to the Port Authority in the future, if they decide to do so. As a result, the provisions in relation to the handling and determination of permission applications and a corresponding requirement for a public register have been included in new sections 66B, 66C and 66D.
- 33.3 Finally, on grounds of navigational safety the Port Authority needs the ability to be able to review, amend and potentially revoke existing works licences in the light of changing circumstances in the river (or where a work has been abandoned.) Accordingly, revised subsections (2) to (3B) have been inserted to allow for and set out the circumstances for review, variation, suspension, revocation and termination of the terms of a works permission. The new subsection (3C) will provide a permission holder with an opportunity to correct a breach of the provisions of a permission within a period specified in a notice provided by the Port Authority prior to that permission being terminated or revoked.
- 33.4 The provisions of subsections (6) and (7) have been amended to reflect the position in section 61, substituting for references to the cables of the Postmaster General references to “electronic communications line” and “electronic communications network”, as defined in section 2(1), and the Environment Agency in place of a river authority.
- 33.5 Subsection (8) has been added to clarify that nothing in this section affects the requirement for consent under any other enactment.
- 33.6 A transitional provision has been included within the Order at paragraph 3 of Schedule 2, to clarify that where a works licence has been granted, or deemed to have been granted by the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, prior to the bringing into force of the Order, this is to be deemed to have been granted as a works permission under section 66. It confirms that the rights conferred upon the holder of the works licence by section 66(1)(b) will continue to apply notwithstanding the repeal of that provision.
- 33.7 This achieves the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

34 Article 31 Permitting of mooring, Permission applications, Determination of permission applications & Public register of permissions

- 34.1 Section 66A introduces a new mooring permission for vessels on the river Thames. This will allow the Port Authority to regulate the mooring of vessels on the river and enforce against vessels which are mooring without authorisation or contrary to the safety of

navigation in the river and is considered desirable in the interests of the safe and efficient use and management of the Thames. Certain exemptions from the requirement for a permission are set out in section 70 of the 1968 Act and explained in relation to that section. It should be noted that if a works permission has been granted which permits mooring of vessels to the permitted works, a separate mooring permission will not be needed.

- 34.2 As with a works permission, a mooring permission will confer a statutory defence for an activity which interferes with the public right of navigation that would otherwise give rise to an action in public nuisance. However, like a works permission it will not confer a property right to moor a vessel, which will need to be obtained separately from the owner of the bed of the river.
- 34.3 Section 66A mirrors for mooring permissions the provisions in section 66 for works permissions.
- 34.4 A transitional provision has been included at paragraph 4 of Schedule 2 to the Order to make clear that a holder of an existing licence or agreement to moor granted by the Port Authority prior to the commencement date is not required to apply for a mooring permission under section 66A in relation to that mooring.
- 34.5 Section 66B covers applications for works, mooring and dredging permissions under sections 66, 66A and 73.
- 34.6 It is based on sections 67 and 68 of the MCAA but subsection (1) also incorporates requirements from the Port Authority's former section 66(2) to make the application in writing accompanied by plans, sections and full particulars, and allow the Port Authority to require modifications to the documents submitted.
- 34.7 Subsections (3) and (4) set out means for the Port Authority to gather if necessary through investigations, examinations and tests sufficient information and obtain any necessary fees to register an application. Subsections (5) and (9) make it clear that registration under section 66B is a pre-condition to determination of an application in accordance with new section 66C, and the Port Authority is entitled to refuse to proceed with an application unless and until an applicant complies with the requirements of this section. Following registration a works or dredging permission application is publicised to bring it to the attention of anyone likely to be interested in it (subsections (6) to (8)) unless the Port Authority considers in a particular case that notice need not be published or the Government confirms that publication would not be in the public interest (subsection 10). Subsection (6) also makes clear that the publication requirements do not apply to an application for temporary permission.
- 34.8 Under section 66C(1) the Port Authority can only determine a permission application if it has been registered and where required, publicised, under section 66B. The matters the Port Authority must have regard to in determining an application are (necessarily) different from those set out in the MMO's section 69(1). Subsection (2) provides that the Port Authority has a duty when determining any permission application to have regard to its legal powers and duties, the ability of the applicant to comply with permission terms and conditions and to any representations made during the notice period publicised in section 66B(6). Under subsection (3) the Port Authority must consider the use to be made of the works and subsection (4) reflects the current three month period for deciding on an application with provision for extension of time with the applicant's agreement. Subsection (5) provides that sufficient security may, in circumstances where it is reasonable to do so, be required to be provided to guarantee any obligations arising from the grant of the permission.

- 34.9 New section 66D requires the Port Authority to maintain a public register of information relating to works, mooring and dredging permissions granted, with exclusions on grounds of national security or commercial confidentiality. The register will provide a public record of all the permitted works (aside from those authorised under a temporary permission, unless the Port Authority decides to include them), dredging and mooring on the Thames, to assist for instance in enforcement under section 70 or specific information in relation to an incident on the Thames.
- 34.10 These four new sections meet the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3.

35 Article 32 Charge for permission

- 35.1 Section 67 has been modified as the consideration for a works licence currently includes both the property element (which is now charged under section 11 in relation to grant of a property right) and other administrative charges which were not identified. The different elements of those administrative charges which the Port Authority may impose (whether or not the work is on the Port Authority's land) in relation to a permission, a charge for determining the permission and a separate charge for monitoring compliance with the terms of a permission, are now set out transparently in this section.
- 35.2 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

36 Article 33 Appeal to the Secretary of State

- 36.1 To reflect changes in government functions since 1968 and current practice for works licence appeals, the heading and content of this section substitutes "the Secretary of State" in place of all references to the "Board of Trade". Consequential amendments have been made in light of the changes in sections 66, 66A, 66B and 66C from a licensing regime to a permissions regime and the scope of the appeal provisions have been extended to cover works, the dredging and mooring permissions and the suspension of permission. Section 69(1)(b) makes clear that the appeals provision does not extend to the terms of any reassessment of the fee for a permission. The appeals arrangements in Schedule 4 have also been updated, see paragraph 103 of this statement.
- 36.2 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

37 Article 34 Works, mooring or dredging without permission

- 37.1 Section 70 has been expanded generally to include other permissions granted under this part of the Act and subsection (1) has therefore been expanded to prohibit a person, or causing another person, to carry out works, dredge or moor a vessel without or in breach of the terms of a permission under sections 66, 66A or 73. Subsection (1) also includes the words "cause or permit" to cover the situation where the applicant is not in a position to comply with the conditions e.g. where the applicant has rented a flat with a balcony and is not given the right, in the lease, to remove the balcony.
- 37.2 Subsection (1A) has been included to provide exemptions to the need to obtain a mooring permission where a vessel is moored temporarily or in the exercise of the public rights of navigation, or is moored under rights in a works permission, is moored to a historic

mooring under section 63 or at a work for which no works permission is required or is a Port Authority vessel.

- 37.3 Subsection (2) retains in respect of breach of or failure to have a works permission a fine not exceeding level 5 and introduces a fine not exceeding level 4 for breach of or failure to have a dredging or mooring permission. Note that the scope of a Harbour Revision Order to create a new offence is limited by section 14(3) of the Harbours Act 1964 to a penalty not higher than level 4 on the standard scale. The amended wording makes clear that in relation to the breach of a mooring permission, this is an offence only if done without reasonable excuse.
- 37.4 The remediation provisions in subsection (3) have been considerably expanded and new subsections introduced to allow the Port Authority to serve a stop notice as prescribed in subsection (4) and require the site to be restored to its former condition. The stop notice provisions reflect the MMOs powers under s102 of the MCAA. Under subsection (5), the notice must include the potential consequences of failing to comply with the notice, including the actions the Port Authority may take under this section.
- 37.5 If a person fails to comply with the stop notice subsection (5) authorises the Port Authority to seek an injunction, and carry out any remedial works or actions necessary in their reasonable opinion, to recover the costs of doing so and sell or dispose of an associated work or vessel. Subsection (9) requires that, except in an emergency, the Port Authority must give at least 7 days' notice of their intention to the owner before removing any works or vessels. Later subsections allow for recovery from the owner of costs the Port Authority has incurred under this section, including any outstanding fees, costs concerning the service of notices, works to remediate the site, removal and storage of a vessel or works and any sale. The Port Authority is permitted to retain any surplus if the owner has not come forward within 6 months of a sale, or to recover any deficit from an owner as a debt, but they must return an unsold vessel to its owner if their costs relating to that vessel are paid.
- 37.6 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

38 Article 35 Emergency safety notice

- 38.1 Section 70A has been adapted from the MMO provisions in section 104 of the MCAA. It provides for a notice to be issued requiring the provision of lights, signals or other aids to navigation or the stationing of guard vessels. It applies to any permitted works, mooring or dredging activity which in the reasonable opinion of the Port Authority are or are likely to become an obstruction, danger or impediment to the safe or convenient navigation or use or conservancy of the Thames. The Port Authority must state their grounds in the emergency safety notice, must state the date and time from which the requirements take effect and may specify steps to ensure compliance is undertaken safely (subsection (5)). The notice is to be served on the permission holder and, if relevant, and there is no permission, on the person on whom a notice has already been served under section 70(3) relating to a breach of that section. Subsection (7) allows the Port Authority to revoke or vary an emergency safety notice. The penalty for non-compliance is a fine at level 4 on the standard scale.
- 38.2 This new section meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3, specifically, paragraph 3(b) – varying powers for the purpose of making safe the navigation of the harbour.

39 Article 36 Works to be within nearest parish

39.1 The only amendments to section 71 are to replace ‘Licensing’ with ‘Permitting’ and ‘licensed’ with ‘permitted’.

40 Article 37 Permitting of dredging, etc

40.1 Section 73 has been amended and extended on terms consistent with the requirements for works and moorings permissions. It now provides for variation, suspension, revocation and termination.

40.2 Subsection (7) has been added to clarify that nothing in this section affects the requirement for consent under any other enactment.

40.3 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

41 Article 38 Crown property

41.1 Section 74 has been amended to provide for permissions and permitting.

42 Article 39 Lands above mean high water level

42.1 This article removes the definition of “mean high water” included within section 75 of the 1968 so as to remove any possible confusion from the 1968 Act containing two definitions of that term.

43 Article 40 Transfer of work or mooring

43.1 The new provision, section 75A, sets out that the owner of a work to which a works permission relates, may not transfer their interest in that work unless they also transfer the works permission to the same person pursuant to subsection (2). Under subsection (2) a works permission may only be transferred for the purpose of transferring the work to which it relates and only with the consent of the Port Authority, which is not to be unreasonably withheld.

43.2 Additionally, the holder of a works permission is required under subsection (3) to give the Port Authority (if requested and if known to them) details of any person having a current interest in the work. Failure to provide the details or knowingly or recklessly giving false details is subject to a fine not exceeding level 3 on the standard scale.

43.3 A person transferring their interest in the work or in a vessel which is subject to a mooring permission must give the Port Authority within 28 days of doing so details of the transferee. Failure to provide the details without a reasonable excuse or knowingly or recklessly giving false details is subject to a fine not exceeding level 3 on the standard scale.

43.4 These provisions are intended to assist the Port Authority in the control of permitted works and moorings and to enable it to identify and enforce against the permission holder or any other person who has an interest in the work or mooring where the work or vessel has been transferred and the terms of a permission are not being complied with or a work has fallen into disrepair.

43.5 This will not apply to a dredging permission.

43.6 This new section meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3, specifically 3(c) –varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

44 Article 41 Provision against danger to navigation

44.1 Section 77(1) is qualified to enable the Port Authority to monitor a tidal work once it becomes aware of its decay or destruction and to lay down buoys, lights and take other steps to prevent danger to navigation if it considers it necessary to do so.

44.2 This meets the objective in paragraph 3(b) of Schedule 2 to vary a power to mark or light the harbour.

45 Article 42 Abatement of works abandoned or decayed

45.1 Section 78 has been amended by substituting “Board of Trade” with “Secretary of State”. In subsection (1), “think” has been replaced by “thinks” while in subsection (3) “them” has been replaced by “the Secretary of State”.

46 Article 43 Survey of tidal works

46.1 Section 79 has been amended by replacing “Board of Trade” with “Secretary of State”.

47 Article 44 Permanent lights on tidal works

47.1 This article adds an explicit cross-reference to section 62(2) of the 1968 Act so as to refer to the role of Trinity House in approving the placement of certain works.

48 Article 45 Permanent lights on works

48.1 So as to prevent danger to navigation, section 80A makes provision for the harbourmaster or Trinity House to require works in the Thames to be lit at night and during times of restricted visibility. This will remove the need to include specific provisions for this in each works permission and also remedies a gap in the legislation in relation to works of statutory undertakers. It will be an offence to fail to comply with the harbourmaster or Trinity House’s requirements within such time as is reasonably required by the harbourmaster or Trinity House (although a defence of proving all reasonable precautions and the exercise of all due diligence to avoid an offence is included), and the Port Authority will also be able to pursue an injunction as to compliance. Further, they are authorised to enter on land and the work in order to light or repair or replace existing lights on works and recover the costs of doing so as a debt.

48.2 This additional section meets the objective in paragraph 3(b) of Schedule 2 to vary a power to mark or light the harbour.

49 Article 46 Agreements about calling at landing places

49.1 In section 85, the reference to “waterman” has been changed to “master”. This widens the requirement as a boatmaster is required on commercial vessels which do not fall within pilotage but private vessels may also want to enter into an agreement to use a landing place and not have a boatmaster in charge.

49.2 This fulfils the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

50 Article 47 Maintenance of Richmond works and working of sluices

- 50.1 The consent of the Board of Trade in section 88(2) has been deleted as this section is dealing with protection of navigation and it is not considered that this judgment is appropriate for the Secretary of State to make. The height in subsection (1) has been converted to metric measurement and reference is now made to Ordnance Datum Newlyn.
- 50.2 These amendments meet the objective in paragraph 17 of Schedule 2, for any object that does not fall into the preceding paragraphs, but will be conducive to the efficient functioning of the harbour.

51 Article 48 Entry on land to survey, etc.

- 51.1 Section 90 has been expanded to widen the powers of the Port Authority to enter on to third party land by including new powers to enter for the purposes of monitoring compliance with the terms of a works, dredging or mooring permission..
- 51.2 A new subsection (1A) ensures that an authorised officer entering land under this section has the powers contained in subsections (2) and (5) to (8) of section 137.
- 51.3 A new subsection (1B) makes clear that the entry power in subsection (1A) does not apply to a dwelling (which is defined in subsection (7)). A new subsection (3A) clarifies that compensation under subsection (3) will not be payable in respect of damage necessarily caused while identifying that there has been a breach of a permission.
- 51.4 The new subsection (5) enables the Port Authority to authorise a constable to exercise these powers subject to the requirements of subsection (6).
- 51.5 These amendments meet the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour.
- 51.6 The Port Authority has considered the government guidance on the amendment of powers of entry in drafting this section.

52 Article 49 Times when public use of Thames may be restricted

- 52.1 Section 91 has been amended to widen the purposes for which public access may be restricted in subsection (1), to include any works or operations on or adjacent to the river, and any event or activity taking place on or over the river and to preserve the safety and security of the public. This reflects the wider use that is now made of the Thames.
- 52.2 In subsection (2) the power to impose a restriction or exclusion has been qualified so as not to extend for longer than is reasonably required for that particular purpose. The Port Authority is now required under modified subsection (3) to give notice in an appropriate form as soon as reasonably practicable to persons likely to be affected by the exclusion or restriction.
- 52.3 Subsection (4) imposes an offence where a person enters a restricted or excluded area without consent, lawful authority or reasonable excuse.
- 52.4 Currently, the Port Authority does not have adequately flexible powers to restrict public use of the Thames to ensure that events and other operations can be safely undertaken. In certain cases, this has seen vessels ignoring instructions and proceeding, with some hazard, into areas of the river temporarily closed for safety reasons. The changes to

section 91 will give the Port Authority greater powers to effectively enforce river closures, control traffic and impose navigation control.

- 52.5 These amendments meet the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(c), regulating the carrying on by others of activities on harbour land.

53 Article 50 Abatement of nuisances

- 53.1 The provisions of section 92 have been extended to enable the Port Authority to recover as a debt in the courts the costs it reasonably incurs in abating a nuisance or annoyance from the person who created it.
- 53.2 This fulfils the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

54 Article 51 Grab chains and escape ladders

- 54.1 A new section 93A has been included which gives the Port Authority the power to require the owners of land adjoining the Thames to install and maintain such grab chains and escape ladders as the Port Authority may reasonably require. These safety measures were expressly recommended in the report of the Thames Safety Inquiry as beneficial life saving measures to have along the length of the river and so this new section gives the Port Authority greater power to ensure that they are installed and maintained.
- 54.2 Subsection (2) of the new section allows an adjoining landowner to object to a requirement to install this equipment on the ground that it is not practicable to do so. In this situation, that matter must be referred to be determined by a single arbitrator.
- 54.3 Subsection (3) makes non-compliance with a requirement under section 93A(1) an offence, unless there has been a successful objection under subsection (2) or where a person can prove they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (see subsection (5) and enables the Port Authority to go onto the land for the purpose of installation or maintenance of the equipment and reclaim their costs in doing so.
- 54.4 Subsection (4) clarifies that the Port Authority's requirements under subsection (1) are also enforceable in civil proceedings for an injunction.
- 54.5 These amendments meet the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour.

55 Article 52 General rules for navigation

- 55.1 Section 108 creates two offences in relation to navigation on the Thames: firstly, in paragraph (a), the navigation of a vessel on the Thames by the master without due care and attention and, secondly, in paragraph (b), the navigation of a vessel on the Thames by the master in a manner liable to injure or endanger persons, other vessels, the banks or any structure or installation. Paragraph (b) of this section has been amended to add the words "whether or not such navigation was also without due care and attention". This is to clarify the difference from paragraph (a) because problems have arisen due to the similarity of the two offences.

55.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

56 Article 53 Overcrowding of vessels

56.1 Section 110 sets out rules in relation to the overcrowding of vessels. In subsection (1) the use of the word “carry” means that this provision currently does not apply to a moored vessel which has too many people aboard. The word “carry” has been changed to “have on board” in order to clarify that this section covers static vessels.

56.2 Subsection (2) has been updated with a reference to the Merchant Shipping (Survey and Certification) Regulations 2015.

56.3 This achieves the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

57 Article 54 Special directions to vessels in the Thames

57.1 Section 112(1) has been amended to make clear that where it is necessary for making the direction effective, a special direction may override any of the permissions which might be granted under the permitting regime in Part V.

57.2 The purposes for which the harbourmaster may give special directions set out in subsection (2) are extended. Subsection (a) allows special directions to require compliance with byelaws and other statutory powers of the Port Authority. Subparagraph (c) has been expanded to allow regulation of waste and the supply of services. A new subparagraph (d) has been added enabling special directions to be given in relation to a restriction or exclusion imposed under section 91 (Times when public use of Thames may be restricted) and a new subparagraph (e) enables special directions to be given in relation to the embarking or landing of passengers.

57.3 A new subsection (3) clarifies that in an emergency a special direction given for the purposes set out in subsection (2) may be given to all vessels or to a class of vessels on the river.

57.4 This meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

58 Article 55 Regulation of crowds

58.1 Section 119(1) authorises the giving of orders by the Commissioner of the Metropolitan Police, with a view to maintaining public order and safety and has been widened to allow “a Police Officer of at least the rank of Assistant Chief Constable” to give such orders, because the Port Authority’s area extends beyond the bounds of the Metropolitan police area, for instance, into the City of London, Essex and Kent.

58.2 This fulfils the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

59 Article 56 Power to raise and remove vessels sunk, etc.

59.1 The references to duties and taxes in subsections (2) and (3) of section 120 of the 1968 Act have been simplified so as to cover any duties or taxes under any enactment. This is to ensure that all forms of liability are covered.

- 59.2 In subsection (5), which deals with situations where the owner of the vessel is not known, consistent with other changes to the Act, for the reference to “head office” there is substituted “principal office”, on the basis that the Port Authority no longer has a head office. Further minor amendments are made to enable the notice to be displayed online.
- 59.3 Subsection (7) has been amended to clarify that the powers in this section can also be used in relation to any equipment on the vessel and a new subsection (8) enables the Port Authority to appoint a third person to carry out the practical actions under this section. The reason for this is that historically the Port Authority has had its own significant salvage capacity but this has diminished over time. At the same time, the size of vessels has largely increased. As a result the Port Authority might need to contract out these powers in respect of vessels, particularly larger vessels.
- 59.4 This meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of raising wrecks or making safe the navigation of the harbour.

60 Article 57 Power to deal with unserviceable vessels & Sale or disposal of vessels

- 60.1 Section 120A is a new section which provides the Port Authority with a new power to deal with unserviceable vessels, which is required to assist in the interests of safe navigation. It is based on the powers in section 15 of the Harwich Harbour Act 1974. It will allow the Port Authority to deal with vessels to which section 120 does not apply. The definition of “unserviceable” is based on that in s.57 of the Harbours, Docks and Piers Clauses Act 1847. Subsection (6) makes it clear that this section does not apply to a houseboat which is occupied for residential purposes.
- 60.2 A new section 120B has been added to include further details concerning the mechanism for the sale or disposal of vessels by the Port Authority and provides that the vessel will vest in the new owner free of any mortgage or other charge, requires the Port Authority to provide notice of the operation of subsection (2) within 28 days to any person with the benefit of any mortgage or other charge, deals with registration of the new owner and provides that where the vessel is destroyed or disposed of notice must be given to the Registrar of Shipping.
- 60.3 The Port Authority does not have adequate powers to deal with unserviceable vessels, particularly those that are not moored in the main navigation channel. Section 120A allows the Authority to remove unsafe vessels which constitute a potential, but unrealised, hazard to navigation. The Port Authority will be granted scope to retain any proceeds of sale to cover costs in clearing/removing a vessel. Where this does not raise sufficient funds it will be able to recover these from the owner, as provided for in s120B.
- 60.4 These new sections meet the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3, specifically 3(b) – varying powers for the purpose of making safe the navigation of the harbour.

61 Article 58 Removal of obstructions other than vessels

- 61.1 Section 121 gives the Port Authority the power to remove various obstructions in given situations. Subsection (1) has now been amended such that, if it is not reasonably practicable to remove the obstruction without destroying it, the Port Authority may destroy it. The Port Authority has had to deal with many obstructions such as sunken debris, shipping containers, machinery, petrified tree and even crashed aircraft. Whilst the Port Authority would typically seek to remove the obstruction, sometimes this may not be possible without destruction – for example cutting a shipping container into sections. There are similar provisions in s.252 of the Merchant Shipping Act 1995.

- 61.2 A consequential amendment has been made to subsection (6).
- 61.3 All the towpaths along the Thames have now become public highways, footpaths or byways and the responsibility of the local highway authorities and so the reference to “towpath on the Thames” has been removed from subsection (1)(b). It has been replaced with a reference to “landing place” because the Port Authority has concerns with the obstruction of public landing places and draw docks.
- 61.4 The list of local authorities in subsection (7) has been updated to include the Greater London Authority and Transport for London.
- 61.5 This meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

62 Article 59 Removal of projections

- 62.1 Section 122 gives the Port Authority powers to remove or destroy projections in the river. Subsection (1) has one minor amendment in order to reflect the new permitting regime in Part V such that the definition of projection does not include anything authorised by a works permission.
- 62.2 Subsection (2)(a) is widened to include any projection which already is or which is likely to become a danger to navigation and a reference to use is added such that it covers danger to the use of the river. This ensures consistency with section 120 and 121. A reference to “likely to become” has also been added to subsection (3)(a).
- 62.3 This meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

63 Article 60 Unlicensed vessels not to be navigated

- 63.1 Section 124 sets up a regime for the licencing of certain vessels within the vessel licensing area including a number of exemptions under subsection (2). Subsection (2)(d) has been amended to reflect the change in the definitions, but applies to the same vessels. Under subsection (2)(f), there is now inserted a qualification to the exemption for vessels licensed by another local authority or navigation authority, so that the exemption will only apply to those other licences which the Port Authority considers to be appropriate. In the interests of safety of navigation on the Thames, it is thought desirable to ensure a comparable standard of assessment for vessels.
- 63.2 Subsection (5)(a) has been amended such that a vessel can be navigated, worked or moored within an area four times in any period of 12 months and be treated as being only occasionally in the vessel licensing area. This change has been made to allow for two returns if the vessel navigates through the limits.
- 63.3 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

64 Article 61 Power to refuse or revoke or suspend or terminate a licence

- 64.1 With a new vessel mooring permitting regime being introduced section 125(1) is amended to make clear that this section relates to licensing of vessels under section 124.

- 64.2 To ensure consistency with other sections of the Act, a reference to termination has been added to the heading and to subsection (1) alongside the existing references to revocation and suspension.
- 64.3 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

65 Article 62 Appeals

- 65.1 The amendment to section 126(1) is consequential on the earlier amendment to the heading of section 125 (Power to refuse or revoke or suspend or terminate a licence).
- 65.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

66 Article 63 Lights detrimental to navigation

- 66.1 The Port Authority is faced with increased use of lights along the river, including lasers, which may be a hazard to navigation. Particularly in the case of a laser interfering with navigation, the Port Authority will want to be able to stop its use immediately, rather than issue a written notice. The provisions of section 133 have therefore been amended to omit the reference to a written notice in subsection (1) and consequential amendments have been made in subsection (2).
- 66.2 This meets the objective in paragraph 3(b) of Schedule 2 of varying powers for the purpose of marking or lighting the harbour or making safe the navigation of the harbour.

67 Article 64 Fireworks

- 67.1 A new section 133A has been included to address specifically the increasing use of or lighting of fireworks or explosives on or over the Thames. The concern is that they can mislead vessels on the river or interfere with safe navigation. They may also be mistaken for distress signals. Subsection (1) will require the Port Authority's prior written consent to the use of fireworks or explosives which interfere with safe navigation or mislead vessels, which may be given subject to conditions.
- 67.2 Subsection (2) makes it an offence not to comply with the provisions of subsection (1) without lawful authority or reasonable excuse.
- 67.3 This new section meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(a), improving, maintaining or managing the harbour

68 Article 65 Damage by a vessel

- 68.1 Section 134 details situations in which owners of vessels might be liable to pay the Port Authority the cost of making good damage. This section has been extended to include in subsection (1)(a)(i) reference to "the bed of the Thames", to make clear that the Port Authority can recoup the costs of making good damage to the bed of the river caused by a vessel. A new subsection (1)(a)(iii) has been added to include damage done to any vessel belonging to or chartered or hired by the Port Authority.

68.2 In subparagraph (b) it is clarified that among the costs which can be recovered as a debt through the courts are the costs of surveying a vessel or the bed of the river.

68.3 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

69 Article 66 Giving false draught

69.1 Section 136(1) has been amended so that the requirement for a master to state the draught of his vessel if required to do so covers vessels entering or leaving the limits, not just docks. This will be needed to ascertain vessel charges and to check passage plans. The reference to dockmaster has been updated to refer to harbourmaster since the Port Authority does not have a dockmaster.

69.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to manage the harbour and /or 3(b) of Schedule 2 of varying powers for the purpose of making safe the navigation of the harbour.

70 Article 67 Powers of inspection of works and vessels

70.1 Section 137 is extended to allow the Port Authority to board works in the Thames which are subject to or require a works permission, as well as vessels, anywhere within its limits, for inspection. The heading is amended accordingly. The expanded subsection (1) gives two new purposes for the entry onto to the work or vessel: in connection with a permission under Part V of the Act and to carry out a survey of the bed of the Thames.

70.2 Subsection (2) introduces further powers for an authorised officer while exercising the powers in subsection (1) so as to enable effective use of this power.

70.3 The new subsections (3) and (4) enable the authorised officer to direct a vessel to stop for the purposes of embarkation and disembarkation from a vessel or work. The ability to stop a vessel may also help to prevent further navigational safety incidents.

70.4 There are new obligations on individuals to provide information and assistance to the officer and it is an offence for a person to refuse to give requested information or to knowingly or recklessly give misleading information.

70.5 A new subsection (9) makes clear that the power to board or enter a vessel does not apply to such interior sections of a vessel as are being used for residential purposes or, without the consent of the Company's dockmaster, to a vessel which is within the Company's docks except in an emergency or to prevent or extinguish fire.

70.6 The new subsection (10) enables the Port Authority to authorise a constable to exercise these powers.

70.7 This expanded subsection is based on the inspection powers granted to the Marine Management Organisation under the Marine and Coastal Access Act 2009 and reflects the desire to bring the Port Authority's works permitting functions into alignment with the marine licencing regime.

70.8 As the Port Authority's current powers to board vessels have not been available to the police, sharing the Port Authority's powers to board a vessel with the Police will ensure that safety and security concerns on the river are rapidly and effectively addressed.

70.9 This meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour.

70.10 The Port Authority has considered the government guidance on the amendment of powers of entry in drafting this section.

71 Article 68 Identity of master and owner or occupier

71.1 The amendments to section 138 are made in order to assist the Port Authority in identifying the master, owner and occupier of a vessel. At present there is no power to require a master to give his name and address or that of the vessel's owner nor the occupier the name of the owner. The amendments to section 138 now require a master to provide his own name and address and that of the owner, if it is known to him, and the occupier to give the name of the owner. If he does not do so, or knowingly or recklessly gives false or misleading information, subsection (2) provides that he commits an offence.

71.2 Subsection (3) largely follows what was subsection (1) though it is widened in extent to include the master and occupier, as well as the owner of a vessel to give the Port Authority information as to who was the master of the vessel at a given time. Subsection (4) allows the Port Authority to use any information obtained under subsections (1) or (3) as evidence to determine the identity of the owner, occupier or master of a vessel at a particular time.

71.3 Currently, Port Authority staff do not have the legal power to request the master, owner or occupier of a vessel to identify the master, owner or occupier. The amendments to s138 will provide staff with this power, and allow them to ensure and enforce safety on the river.

71.4 This meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour.

72 Article 69 Autonomous vessels

72.1 A new section 138A has been added to assist the Port Authority in dealing with the increased availability and use of autonomous vessels. Some forms of autonomous vessel can operate without any person being on the vessel and some operate without any person being in control of the vessel even remotely. This would make it impossible for a harbourmaster to issue and ensure compliance with directions.

72.2 Section 138A requires that before the owner of an autonomous vessel permits it to enter the Thames, they must first provide the harbourmaster with a notice containing the name, address and contact details of a person who is either in control or who is able to take control of the vessel remotely; details of the type of vessel and details of the vessel's proposed route within the Thames. This will ensure that the harbourmaster has the contact details of a person to whom he is able to issue directions in relation to the vessel. The notice must be given in writing, not less than 72 hours before entering the Thames and "in writing" is defined in section 2(1) as including by electronic means.

72.3 The new section makes it an offence to allow an autonomous vessel to enter the Thames without giving this notice. The owner would be liable to a fine not exceeding level 4 on the standard scale for committing such offence.

72.4 This new section meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(a) powers to manage the harbour and /or 3(b) for the purpose of making safe the navigation of the harbour.

73 Article 70 Thames watermen and Thames lightermen and article 71 Register of Thames watermen and Thames lightermen

- 73.1 The heading of Part 8 and section 139 of the 1968 Act are amended to take into account the new definitions of Thames waterman and Thames lighterman. The Port Authority will not be under an obligation to keep a register of the Thames watermen and Thames lightermen although it may choose to do so.
- 73.2 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

74 Article 72 Customs entry by Port Authority

- 74.1 Minor amendments have been made to update section 145 to reflect the modern position of Her Majesty's Revenue and Customs.

75 Article 73 Passes for goods

- 75.1 The reference to the Port Authority's police in section 147 has been deleted as the Port Authority no longer has a police force.

76 Article 74 Thames byelaws

- 76.1 Subsection (1) of section 162 sets out the purposes for which the Port Authority may make byelaws for the Thames. The reference to "towpaths" in subsection (1)(f) has been deleted because all the towpaths along the Thames have now become public highways, footpaths or byways and the responsibility of the local highway authorities. Subsection (1)(h) has been amended to cover nuisances under or over the Thames as well as in the river.
- 76.2 A new subparagraph (m) has been added to allow the Port Authority to make byelaws for the purposes of securing the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest, which wording is consistent with all harbour authorities' environmental duties as set out in section 48A of the Harbours Act 1964.
- 76.3 A new subparagraph (n) has been added to allow the Port Authority to make byelaws to regulate bunkering. Bunkering is carried out in river and has been carried out in the estuary and this subparagraph enables the Port Authority to bring in a byelaw dealing with its safe handling, if thought necessary. It is usual for Harbour authorities to have Byelaws in respect of bunkering, one example being Byelaw 113 of the Port of Bristol General Byelaws. The main reason is that there could be severe environmental consequences in the event of a spill, but there are also safety risks such as fire etc – the Port Authority needs to ensure that this high-risk activity has the appropriate oversight. It should be noted that the Port Authority does not have the benefit of incorporation of the wider byelaw making provisions of the Harbours Docks & Piers Clauses Act 1847 that are used by many other harbours.
- 76.4 This meets the objective in paragraph 16A of Schedule 2 of imposing or conferring on the Port Authority duties or powers (including powers to make byelaws) for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological or physiographical features in the harbour and all other natural features.

77 Article 75 Fines for breach of byelaws

- 77.1 Paragraph (d) of section 167 has been amended to raise the fine in relation to a breach of byelaws relating to port premises under section 161 to level 4 on the standard scale and to a daily fine not exceeding £50 to allow for the seriousness of a breach of these byelaws.

78 Article 76 Confirmation of byelaws

- 78.1 The purpose of the amendment to subsection (3)(a) of the byelaw confirmation procedure in section 168 is to limit the obligations of the Port Authority in advertising the intention to apply to the Secretary of State for confirmation. It is thought that in comparison to the publication provisions for byelaws made under local government legislation, which only require publication in one or more local newspapers circulating in the areas to which the byelaws are to apply, the current obligations are more onerous. Under the amended section, the Port Authority will have to publish in the London Gazette and in one or more newspapers circulating in the area to which the byelaws apply. In the case of byelaws affecting all of the limits, this will still be an extensive area which will require advertisement in newspapers in the London, Essex and Kent areas.
- 78.2 The Greater London Authority and Transport for London have been added to the list of local authorities to receive a copy of the notice if the byelaws affect Greater London. Port of Tilbury London Limited and London Gateway Port Limited have been added to the list of bodies to receive a copy of the notice of the byelaws while Southend-on-Sea Borough Council will receive a copy of the notice if the byelaws apply to any part of the Thames between the former seaward limit and the seaward limited. This is to ensure that all harbour authorities adjoining the Thames are made aware of changes in the byelaws.
- 78.3 The requirement to give notice to every river authority has been replaced with an obligation to give notice to the Environment Agency to reflect the fact that the EA has taken on the powers and duties of the river authorities.
- 78.4 As mentioned above, as the Port Authority has no head office, these words have been replaced with a reference in subsection (3)(c) to “principal office”.
- 78.5 Through its website the Port Authority also conveys statutory and other information affecting river users, and it is likely that copies of the byelaws will be available to download without payment or charge. The Port Authority may also choose not to charge for hard copies of the byelaws and for this reason the words “if demanded” have been added to the end of subsection (3)(d).
- 78.6 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

79 Article 77 Proof of byelaws

- 79.1 Section 169 has been amended such that copy of the byelaws can be authenticated by the seal of the Port Authority only. It is no longer required to have the signature of the secretary in addition.
- 79.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

80 Article 78 Rights of way over permitted works and land of Port Authority & Adverse possession claims in relation to the Thames

- 80.1 A new section 175A is added to address the concern that rights of way may be acquired by long use over licensed works or approaches to them. The effect of such rights being acquired is that the Port Authority could not remove the work if it is abandoned or becomes

a danger to navigation or the conservancy. This provision is based on section 57 of the British Transport Commission Act 1949 which prevents such rights being acquired over access to railway stations or depots, or docks of (now) Associated British Ports.

- 80.2 This new section meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.
- 80.3 A new section 175B is included to address specifically the position following the recent case of *The Port of London Authority v Mendoza* [2017] UKUT 0146 (TCC) and to apply to those parts of the Thames owned by the Port Authority the same regime as applies to those parts owned by the Crown, so that paragraph 11 of Schedule 1 to the Limitation Act 1980 (which allows the Crown to recover the foreshore within 60 years of any action accruing) applies. It would seem desirable to apply a standard arrangement to the position relating to adverse possession of land forming the bed of the Thames and the Port Authority therefore seeks to apply the current approach in this matter. The current position is that a person might be able to appropriate part of the river bed in accordance with the terms of the Limitation Act and in this way remove its availability for the provision of any future harbour facilities or use of the river. While such rights would not accrue where that person has a licence, rights might be acquired where the bed is occupied without the Port Authority's knowledge.
- 80.4 Subsection (2) does make it clear however that this will not apply retrospectively, so that the 60 year limitation on actions to recover the bed of the Thames will not apply to a right of action which has occurred more than 12 years before the date of the Order coming into force.
- 80.5 This modification of the Limitation Act 1980 falls within the scope of section 14 (3) of the 1964 Act as a provision which is supplementary to and required to give full effect to the provisions of the Order which split the grant of interests in land from the works permitting regime. Under the new regime the Port Authority will need to grant a separate right or interest in land in order to allow someone to implement a works licence. This modification will help to ensure that the Port Authority is able to grant the necessary interest in land and this is not frustrated by another landowner claiming adverse possession over the foreshore.

81 Article 79 Removal of vehicles at port premises

- 81.1 Section 177 which deals with the removal of vehicles from port premises has been replaced by a new section extending the provisions.
- 81.2 Subsection (1)(a) sets out situations in which the Port Authority may remove a vehicle to a place of safe custody at the owner's risk. A new subsection (1)(a)(iii) provides for a parking prohibition notice to be left on a vehicle and for that vehicle to be removed after the expiry of a period of 24 hours from when the notice was left on the vehicle. Subsection (1)(a)(iv) is the former subsection (iii) amended to include situations where the Port Authority considers a vehicle has been left in an unsafe place and situations where it considers the vehicle poses an obstruction or a security risk. A new subsection (1)(b) has been added to allow the Port Authority to remove a vehicle which it considers to have been abandoned on port premises. The problem the Port Authority has encountered is parked vehicles and wrecked vehicles being left on its private accessways particularly to radar sites, which are also used by the emergency services, and on draw docks, which give the public vessel access to the Thames.

- 81.3 Subsection (2) has been amended to make reference to the person responsible for the vehicle rather than the registered owner. A definition of 'person responsible' is then added as a new subsection (3). This definition is based on one previously used in the Cowes Harbour Revision Order 2012. The amendments made to subsection (4) are also based on wording included in the Cowes HRO, as is the new subsection (6) which requires notices to be displayed at entrances to parking places.
- 81.4 A new subsection (5) has been added to deal with a situation where the Port Authority considers that the vehicle is in such a condition that it ought to be destroyed. The Port Authority is then required to notify the keeper of the vehicle that if it is not collected then they propose to destroy it and the keeper will be responsible for the expenses of destruction.
- 81.5 New sections (7) and (8) have been added and are based on section 4 of the Refuse Disposal (Amenity) Act 1978. They give the Port Authority the power to dispose of vehicles removed under this section, including power to provide plant and apparatus for doing so. The new subsection (9) clarifies that the costs recoverable by the Port Authority include the costs of employing contractors, the removal and storage of the vehicle and the expenses of disposal. The new subsections (10) and (11) are also based on section 4 of the Refuse Disposal (Amenity) Act 1978 and deal with situations in which the keeper of the vehicle claims the vehicle.
- 81.6 New subsection (12) again is based on the Cowes Harbour Revision Order and defines references to the keeper of the vehicle.
- 81.7 Finally, a new subsection (13) introduces a definition of 'vehicle' for this section only. It is defined by reference to s.99 of the Road Traffic Regulation Act 1984.
- 81.8 This meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

82 Article 80 Access for government officers

- 82.1 As elsewhere, references to the Board of Trade have been updated to refer to the Minister (defined as the Secretary of State for Transport). Section 181 has also been amended to update it with a reference to her Majesty's Revenue and Customs.

83 Article 81 Authentication of Port Authority's documents

- 83.1 Section 183(1) has been amended to make it clear that a permission under the new Part V regime is covered by these provisions regarding authentication of documents. It is also amended to extend the scope of who is entitled to authenticate the Port Authority's documents to cover an officer authorised by the Port Authority and not just the secretary.
- 83.2 The reference in (2) to the management of the business at a dock has been deleted as the Port Authority has ceased to own any docks.

84 Article 82 Service of documents

- 84.1 Section 184 has been widened to allow for electronic communication and service. Additionally, subsections (1)(b) and (3)(b) have been updated to cover Limited Liability Partnerships.

85 Article 83 Port Authority's publications

- 85.1 As mentioned above, as the Port Authority has no head office, the references in paragraphs (a) and (b) of section 185 have been replaced with references to “principal office”.
- 85.2 Section 185, which relates to any obligations the Port Authority has to publish a document, has been amended so that it provides for electronic publication. As in the case of the Port Authority’s byelaws, it may choose not to charge for hard copies of its publications (especially as copies are available free of charge on the Port Authority website) and for this reason the words “if demanded” have been added to the end of paragraph (b).
- 85.3 This meets the objective in paragraph 2 of Schedule 2 of regulating the procedure of the Port Authority.

86 Article 84 Crown rights

- 86.1 In section 186, the reference to the Port of London (Consolidation) Act 1920 has been replaced with a reference to land in which there is an interest belonging to a government department (or in trust by Her Majesty for a government department); Her Majesty in right of the Crown or in right of the Duchy of Lancaster or the Duchy of Cornwall and so held since 1856. The reference to an existing interest of a government department makes it easier to identify what land this provision relates to.
- 86.2 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

87 Article 85 Certain powers not exercisable in Medway approach area and areas off Southend-on-Sea and Sheerness

- 87.1 In section 187(1)(a), a new proviso has been added to clarify that the restriction set out in the first column of Schedule 8 in relation to laying down moorings does not apply when the Port Authority is laying them in the carrying out of the functions as a local lighthouse authority. This is to ensure that the Port Authority is able to discharge the responsibilities as a local lighthouse authority which were conferred on it by the Merchant Shipping Act 1995 and to comply with directions given by the general lighthouse authority under section 199 (Control of local lighthouse authorities).
- 87.2 The reference in subsection (1)(b) to Southend Corporation has been changed to Southend-on-Sea Borough Council. The Urban district council of Sheerness is now part of Swale Borough Council.
- 87.3 Subsection (2) is repealed because it repealed section 47 of the Southend-on-Sea Corporation Act 1947 and this repeal has now had effect meaning this provision is spent.

88 Article 86 Saving for the East London railway tunnel

- 88.1 The reference to the London Transport Board in section 189 has been deleted because the tunnel is now vested in Rail for London Limited. There is no need to name the current owner in order to identify the tunnel to which this section relates. The heading of the section has been updated to reflect this.
- 88.2 Subsection (3) is repealed because the Port Authority no longer owns the Eastern and London Docks.

89 Article 87 Saving for rights, etc, of Temples

89.1 In section 192, the reference to Part VI (Prevention of pollution) which has been repealed is deleted.

90 Article 88 For protection of the Essex County Council

90.1 Section 193(2) has been repealed because it is redundant as it refers to section 46 (Refuse dumps) of the Essex County Council (Canvey Island Approaches, etc.) Act 1967 which has been repealed.

90.2 In subsection (4) there are several minor amendments consequential on the amendments made in Part V of the Act.

91 Article 89 Saving for the Trinity House

91.1 This article makes amendments to the saving provision for Trinity House, at its request, for consistency with other legislation.

92 Article 90 For protection of statutory undertakers

92.1 Section 195 contains protective provisions for the benefit of statutory undertakers.

92.2 There are several minor amendments consequential on the amendments made in Part V of the Act.

92.3 Subsection (3)(a) has been amended to allow the Port Authority to extend the circumstances in which it can give directions to statutory undertakers regarding the construction, alteration, replacement or renewal of their apparatus to include directions for the conservancy of the Thames or to enable the construction of works in the Thames. Unlike the Water Industry Act 1991, the Electricity Act 1989 does not include a saving for harbour authorities in relation to the exercise of the undertaker's powers and the Port Authority needs to ensure that unfettered use of statutory undertakers' powers does not prevent appropriate river development.

92.4 The new subsection (4A) spells out that in addition to directions given under subsection (3)(a), the Port Authority may also require apparatus which has been constructed, placed, altered, renewed, maintained or retained under subsection 3(a) to be relocated. As this is to be at the expense of the Port Authority, it is a power that the Port Authority are likely to use carefully.

92.5 These changes relate to the Port Authority's functions as landowner, regulator and promoter of use of the Thames, and are being made to protect the Port Authority's scope to act in the interests of river users and the wider Thames community. This will ensure that the Authority have the powers necessary to effectively manage the river, ongoing developments on it, and to ensure its progressive improvement.

92.6 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

93 Article 91 For the protection of the Metropolitan Water Board

93.1 Section 197 contains protections for the benefit of the Metropolitan Water Board (and its successors). There are several minor amendments consequential on the amendments made in Part V of the Act.

- 93.2 There is an added requirement for any body to which the exemption from the Port Authority's permitting regime in this section applies to give six weeks' notice to the Port Authority of its intention to carry out works. This is to enable the Port Authority to assess the proposals and make any necessary plans to abate any nuisance or mitigate any interference with the navigation or conservancy arising from the works and their subsequent use
- 93.3 This meets the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

94 Article 92 Prohibition on pollution, etc, of Thames and docks

- 94.1 Section 200, which gives the Port Authority powers in relation to pollution, is extended by the insertion into subsection (1) of wording to include the passing of liquids and other poisonous, noxious or waste matter into the river within the offence created. This is in line with other harbour authority powers such as section 25 of the Harwich Harbour Act 1974. The wording also now clarifies that solid matter does include matters in suspension.
- 94.2 Subsection (5) is extended to include provisions to allow the Port Authority to recover as a debt the costs of removal and remediation or mitigation of damage or pollution caused from the person committing the offence, in line with the principle that 'the polluter pays'. The wording of subsection (5) also makes clear that the pollution might not be directly caused and could result from a chain reaction.
- 94.3 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

95 Article 93 Obstructing bridges

- 95.1 Section 202 has been amended slightly to reflect the fact that although the Port Authority does not currently own any such bridges, there are bridges over creeks. The reference to "within the limits" ensures that these are covered by the section.

96 Article 94 Institution and defence of proceedings

- 96.1 Section 205 gives details about the institution and defence of proceedings by the Port Authority. A reference to the secretary of the Port Authority has been added to subsection (2) so that it is consistent with subsection (1).
- 96.2 This meets the objective in paragraph 2 of Schedule 2 of regulating the procedure of the Port Authority.

97 Article 95 Jurisdiction of justices

- 97.1 Section 207(1)(c) has been amended so that the distance is given in metric.

98 Article 96 Tilbury Landing Stage Lower

- 98.1 The new section 210A relates to the jetty, or landing stage, constructed under the Port of London and Midland Railway Act 1922. The jetty was split into two parts with part owned by the Port Authority and part by the Railway Company, known as the Tilbury landing stage lower. The Port Authority's part was transferred to the Port of Tilbury, which now also owns and operates the part previously owned by the Railway Company.

98.2 This new section provides for a deemed permission for the landing stage lower under section 66 of the 1968 Act on the terms set out in a new Schedule 12 to the 1968 Act which is introduced by article 104. This deemed permission will cease to have effect if the landing stage lower is no longer used primarily in connection with the accommodation of ferry services between Tilbury and Gravesend.

98.3 This new section, together with the new Schedule 12, meets the objective in paragraph 4 of Schedule 2 of imposing or conferring on the Port Authority duties or powers in addition or in substitution for powers or duties imposed or conferred under paragraph 3(c) regarding powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land as well as, in so far as it regularises the position of the landing stage lower, being conducive to the efficient functioning of the harbour and, therefore falling within paragraph 17 of Schedule 2.

99 Article 97 Inquiries by the Minister

99.1 As elsewhere, section 215 has been amended to update references to the Board of Trade to the references to the Minister defined as the Secretary of State for Transport.

100 Article 98 Description of port limits

100.1 In Schedule 1, the definitions of “the landward limit” and “the seaward limit” have been updated with values of latitude and longitude for greater certainty in determining the limits.

100.2 Additionally, the definition of ‘the former seaward limit’ has been moved from here to section 2 to reflect the fact that it is not the current Port limit as is being described in that Schedule.

100.3 Paragraph 2 has been amended to clarify what is included in the Port Authority’s limits. The positions regarding the tidal River Brent and Chelsea Creek have been clarified, including by adding a definition of the tidal River Brent which is part of the Grand Union Canal. A number of docks, piers and jetties which have been demolished or are no longer accessible from the Thames have been removed from the limits to reflect the current position.

100.4 Paragraph 3 has been amended to remove references to former docks. The PLA does not own these and does not play any role in relation to them. The London Docklands Development Corporation Act 1994 assigned functions over these former docks to another body and provided that these docks could be deleted from the definition of the Port of London through an Order by the Secretary of State. The PLA seeks to achieve this for the same purposes through the HRO. Arguably the former docks have ceased to fall within the limits as defined in schedule 1 but this revised wording clarifies the position.

100.5 In keeping with general practice, the distance has been updated to metric.

100.6 Transitional provisions have been included in the Order, at paragraph 2 of Schedule 2, to avoid the need for owners of existing works which will now be within the port limits to apply for a works permission. The holder of a works licence for an existing work which is partially located in the added area is not required to apply for a new works permission in relation to that part of the work. Similarly, the owner of an existing work located wholly in or landward of the added area is not required to apply for a works permission.

100.7 This meets the objective in paragraph 6 of Schedule 2 of altering the limits within which the Port Authority are to have jurisdiction

101 Article 99 Provisions relating to members of the Port Authority

- 101.1 Paragraph 2(1) of Schedule 2, Part 1 has been amended so that although the provision states that the appointment is to be for three years, its starting date is no longer defined and it will be subject to the provisions of subparagraph (12) which deals with a casual vacancy.
- 101.2 Paragraph 3 has been amended to clarify that the reference to the number of members in the proviso relates to members appointed by the Secretary of State.
- 101.3 The requirements in paragraph 4 have been widened so that they are no longer limited to the list shown. As well as wide experience, special knowledge or ability appropriate to the requirements of the Port Authority's statutory functions will be required.
- 101.4 Paragraph 6(1) has been amended to deal with the potential situation in which an officer of the Port Authority might change his or her role and should no longer be sitting on the Board. The words "or ceases to hold the executive position held by him at the time of his appointment" has been inserted to clarify that a member will cease to be a member of the Board at the time that they cease to hold the executive positions that they held when they were appointed.
- 101.5 A new paragraph 8(3) has been added. It addresses the situation in which the Secretary of State chooses to appoint as chairman a member that the Port Authority had previously appointed to the Board. In this situation the member will no longer be treated as having been appointed as a member by the Port Authority. The effect of this is that his appointment does not reduce the number of members that the Port Authority can appoint which is already limited to three under paragraph 1B of the Schedule.
- 101.6 At paragraph 11 additions have been made to the list of reasons for declaring a termination and vacancy. Additionally, provision has been made for suspension which might arise if an accusation is made but not proven, or a member is sick.
- 101.7 Paragraph 12 has been amended to ensure consistency with paragraph 11.
- 101.8 This meets the objective in paragraph 2 of Schedule 2 of regulating the procedure of or any committee of the Port Authority. It is also consistent with the requirements of the DfT's Ports Good Governance Guidance (March 2018), in relation to the first of the Leadership principles (p9), for the Port Authority to "*be headed by an effective board collectively responsible for the long-term success of the port business*" and "*to provide leadership within a framework of prudent and effective controls which enables risk to be assessed and managed.*" The amendments also meet the first three and last principles of Board Effectiveness, relating to skills, experience and knowledge of members, effective size of Board, and transparency of and regularity of appointment/re-appointment. The widening of scope of membership also helps to reinforce the Accountability principles on the responsibilities of the Board and the more general principles of harbour authorities operating in openness and transparency (paragraph 2.18).
- 101.9 As a Trust Port, these amendments are also in line with the Corporate Governance principles relating to appointments, of merit, openness and fairness; consistent with the requirement for 3-year terms and considerations for re-appointments see (3.13-16). The arrangements are also intended to ensure that the Port Authority Board members are fit and proper persons who are able to reflect the principles of board membership set out in the 7 principles of independence, accountability, openness, selflessness, integrity, objectivity, honesty and leadership (p28) while at the same time being able to operate the Authority on a commercial basis (see first principle of commercial accountability, compliance and strategic reviews, (p32). Finally, these proposed amendments to membership of the Port Authority represent the outcome of the third such principle in action, namely, that "*trust port boards should review their governance arrangements to*

check that they remain in line with the best practice and standards in this guidance. Where necessary, revised arrangements should be put in place”.

102 Article 100 Proceedings

- 102.1 Paragraph 2 of Schedule 2, Part 1 has been amended to confirm that, among other situations, the validity of the proceedings of the Port Authority is not to be affected by the fact that any member was disqualified from acting on grounds of interest or had ceased to hold office. This provision is contained in the legislation of other harbour authorities.
- 102.2 A new paragraph 3A has been added widening the way Board and committee meetings may be conducted and votes taken, to include members who are only present through electronic means.
- 102.3 A new paragraph 4A has been inserted to enable delegations by subcommittees to a subcommittee or an officer, other than those which under the Harbours Act 1964 it is not possible to delegate.
- 102.4 A new paragraph 5A has been added confirming that the validity of committee proceedings are not affected by any vacancy among the members of the committee or any defect in the appointment of a member or a member taking part being disqualified from acting.
- 102.5 There are minor amendments to paragraph 6 to clarify that it also applies to subcommittees.
- 102.6 A new paragraph 6A has been added to state that the regulation of the Port Authority is to be in such manner as the Port Authority decides.
- 102.7 These amendments meet the objective in paragraph 2 of Schedule 2 of regulating the procedure of or any committee of the Port Authority.
- 102.8 They are also preceded in a number of recent constitution HROs. For instance, the Dover Harbour (Constitution) Revision Order 2016 (SI 2016/250) (Dover HRO) contains a precedent in the Schedule at paragraph 9 for electronic proceedings. Precedent for the delegation provisions can be found in Schedule 2 to the Great Yarmouth Port Authority (Constitution) Harbour Revision Order 2015 (SI 2015/1395), Newlyn Pier and Harbour Revision (Constitution) Order 2010 (SI 2010/1462) and in Schedule 2 to the Caernarfon Harbour Trust (Constitution) Harbour Revision Order 2012 (SI 2012/1984). The provisions dealing with the invalidity of proceedings are based in part on provisions in the Dover HRO.

103 Article 101 Appeals to the Minister

- 103.1 Schedule 4 has been entirely replaced with a new appeals procedure to cover appeals to the Secretary of State made under sections 11, 69 and 126. The new procedure is based on provisions that have been included elsewhere in legislation, for example in the High Speed (London – West Midlands) Act 2017. The process is a written representations procedure.
- 103.2 This achieves the objective in paragraph 3(c) of Schedule 2 of varying powers for the purpose of regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.

104 Article 102 Powers not exercisable in the Medway Approach Area and off Southend-on-Sea and Sheerness

104.1 In Schedule 8, paragraph (1)(c) in column 2 has been updated to reflect the fact that the urban district of Sheerness is now part of the district of Swale.

104.2 A modification has been made to paragraph (2) of this Schedule which disapplies the powers of the Port Authority to regulate the Port with the Medway Approach area and off Southend-on-Sea and Sheerness to make clear that the Port Authority can exercise its powers to lay down or replace buoys in these areas. This is because the current exemptions are inconsistent with the responsibilities which the Port Authority has as a local lighthouse authority under the Merchant Shipping Act 1995, as explained in relation to Section 187

104.3 This meets the objective in paragraph 3(a) of Schedule 2 of varying powers to improve, maintain or manage the harbour.

105 Article 103 Transitional provisions

105.1 As elsewhere, the reference to the Board of Trade in paragraph (i) of Schedule 11, has been updated to refer to the Minister (defined as the Secretary of State for Transport). Paragraph (k) has a minor amendment consequential on the updating of the property licence and works permission regime as explained under Part V of this note.

106 Article 104 Deemed permission for the landing stage lower

106.1 This article introduces a new Schedule 12 to the 1968 Act which contains the terms of the deemed permission referred to in paragraph **Error! Reference source not found.**

107 Article 105 References to licence

107.1 This article makes changes throughout the 1968 Act consequential on the introduction of permissions.

108 Article 106 Repeals

108.1 Article 104 acts to repeal the provisions of the Act specified in column 1 of Schedule 1 to the extent specified in column 2. Explanations for these repeals are set out below where they have not been addressed earlier in this statement in support.

108.2 Section 18 (Refreshment rooms) is to be repealed as it is no longer necessary. The Port Authority has a general power under section 19 (Staff benefits) to provide these facilities. The Port Authority no longer owns the docks and it is not thought necessary to provide specifically for refreshment rooms, canteens, etc. any longer as these were really only needed in the docks. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing powers to manage the harbour.

108.3 Section 20 (Staff housing) is repealed as it is no longer necessary. The provisions of section 19 (Staff benefits) would authorise providing housing, if this was deemed appropriate. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.

108.4 The repeals of sections 27, 29, 30 and 33 in relation to exemptions from charges are explained at paragraph 18.3.

108.5 Section 41 (Claims for repayment of port rates) is repealed as a consequence of the repeal of the exemptions to which these claims relate.

- 108.6 Section 46 (Port Fund) is repealed as it is no longer feasible to carry all receipts to and make all payments out of the port fund and there is no longer any need to retain the fund. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.
- 108.7 Section 49 (Temporary loans) is repealed as a consequence of the amendments to section 48 explained at paragraph 25 above. The flexible nature of the new powers in s.49 means there will no longer be a need for temporary borrowing powers under this section.
- 108.8 Section 52 (Ranking of port stock) is repealed because there is now no port stock and the power to create new port stock under section 48 has been repealed.
- 108.9 Section 53 (Stock regulations) has been repealed as a consequence of the repeal of the power to create new port stock.
- 108.10 Section 55 (Regulations relating to bonds) is repealed as a consequence of the repeal of the power to issue bonds under section 48. In addition, the Order repeals the Port of London Authority (Manner of Borrowing Order) 1968 which is deemed by subsection (4) to have been made under this section. This authorises and imposes requirements as to the issuing of bonds, and is no longer required.
- 108.11 Section 58 (Saving for powers of the Treasury) is repealed because it is now redundant. Section 1 of the Borrowing (Control and Guarantees) Act 1946 was repealed by the Government Trading Act 1990 section 4 and Schedule 2 Part I.
- 108.12 Section 72 (Vesting of embanked land) is repealed. In future any land owned by the Port Authority that is embanked will either be sold or leased to the licensee, when the embankment is completed. The Order contains, at paragraph 6 of Schedule 2, transitional provisions which provide for the vesting of existing embankments which have been completed and for vesting still to occur where embankments have been authorised by the Port Authority but not completed. It is a consequential change resulting from the separation of the grant of interests in land from the works permitting regime.
- 108.13 Section 76 (Works to be approved by Board of Trade) is repealed as it has now been replaced by the Marine and Coastal Access Act 2009 and is redundant, such matters now being governed by an application for a marine licence.
- 108.14 Section 89 (Construction of references to Trinity High Water) is repealed because the definition contained in it is no longer required.
- 108.15 Section 93 (Flood prevention) is repealed because the Port Authority no longer owns any of the works referenced in this section.
- 108.16 Section 128 (Registers to record mortgages, etc., and to be open to inspection) is repealed because it is not considered necessary for the purposes or functions of the Port Authority to hold such details of mortgages on a register. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.
- 108.17 Section 140 (Fees for licences and list of fares) is repealed to reflect the fact that the watermen and lightermen no longer have a statutory role under the 1968 Act and the Port Authority no longer has any power under section 164 of the Act to make byelaws for their government and regulation.
- 108.18 Section 141 (Account of imports to be given to Port Authority) is repealed because in future the Port Authority will set out its requirements in relation to charges under section 22

(Charges regulations). The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.

- 108.19 Section 148 (Accommodation for customs officers) is repealed because the Port Authority no longer provides accommodation for customs officers. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.
- 108.20 Section 179 (Millwall docks: exemption from London Building Acts) is repealed because it relates solely to the Port Authority's buildings in the docks which have now all been sold.
- 108.21 Section 180 (Obligations as to bridges, lights, roads, etc.) is repealed, along with schedule 7 to which it refers. These relate to obligations on the Port Authority regarding bridges, lights and roads. Many of the relevant obligations have now been released, but all the remainder relate to docks and land which the Port Authority has disposed of and no longer has an interest in. It no longer has the necessary rights to comply with the various obligations set out in Schedule 7 and the ownership and responsibility for the works has passed to its successors in title to the land. The sale was by transfer not a vesting order.
- 108.22 Section 196 (Application of Merchant Shipping Act 1894 to local lights) is repealed because the Port Authority is now a local lighthouse authority under the Merchant Shipping Act 1995 so this section is redundant.
- 108.23 Section 199 (Traffic offences on dock roads) is repealed because the Port Authority no longer has any dock roads. Although the Port Authority does still operate a wharf, it is considered that these detailed provisions are disproportionate for such a small area. The repeal meets the objective in paragraph 3(a) of Schedule 2 of abolishing duties or powers to manage the harbour.
- 108.24 Section 204 (Offences of bribery, etc) is repealed because the Port Authority is now subject to the Bribery Act 2010.
- 108.25 Section 209 (Saving of section 68 of the Port of London (Consolidation) Act 1922 is repealed along with schedule 10 to which it refers. This historic exemption for charging is repealed for the reasons explained in paragraph 18.3.

109 Article 107 Modifications of the Medway Ports Authority Act 1973

- 109.1 Consequential changes are made in this Act to address the fact that both the Port Authority and the harbour authority for the Medway (the Port of Sheerness Limited) will have regulatory powers within the approaches to the latter's harbour area.
- 109.2 Section 85 (For the mutual protection of Authority and Port of London Authority) of the Medway Ports Authority Act 1973 is modified to insert a new paragraph in subsection (2). This subsection deals with situations where a dispute or difference might arise between the powers of the Port Authority and those of the port authority for the Medway area, currently Port of Sheerness Limited. The new paragraph added by the HRO deals with a potential conflict between powers.
- 109.3 New paragraph (ca) covers the Port Authority's power to lay down or place buoys either under s.62 of the 1968 Act or under s.201 (Powers of harbour authorities) of the Merchant Shipping Act 1995. This paragraph has been added because of the modification being made to paragraph 2 of Schedule 8 to the 1968 Act. Previously this paragraph had excluded the use by the Port Authority of these powers in the Medway approach area, therefore their powers could not previously conflict with those of the relevant port authority in Medway.

109.4 The amendments to section 85 of the Medway Ports Authority Act 1973, as well as the changes to the County of Kent Act 1981 and the Essex Act 1987 achieve the objective in paragraph 3 of Schedule 2 of varying powers imposed or conferred on the Port Authority by a statutory provision of local application affecting the harbour, being duties or powers imposed or conferred for the purposes of (a) improving, maintaining or managing the harbour.

110 Article 108 Modifications of the County of Kent Act 1981

110.1 The changes to this Act contain savings for the Port Authority in respect of the regulating powers of the relevant local authorities.

110.2 The first modification of the County of Kent Act 1981 is the insertion of a new subsection (10) into section 33 (Touting, hawking, photographing etc.). Section 33 empowers a district council to designate certain places such that certain of the activities listed in subsection (2) cannot be done there without the district council's consent. The new subsection (10) states that the powers in this section cannot be used by a district council to so designate any land owned by or vested in the Port Authority. Additionally, if any seashore within the limits of the Port of London is proposed to be designated, the district council must first consult with the Port Authority even if the land is not owned by or vested in them.

110.3 The second modification to the County of Kent Act is the insertion of a new subsection (2) in section 85 (Extension of section 268 of Act of 1936 to houseboats). Section 85 extends the application of section 268 of the Public Health Act 1936 to cover houseboats. In turn, section 268 of the Public Health Act 1936 provides for local authorities to be able to make byelaws in relation to the cleanliness of a number of types of structure. The new subsection (2) states that if the district council makes, amends or revokes byelaws which by virtue of section 85 apply to houseboats, it must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.

111 Article 109 Modifications of the Essex Act 1987

111.1 As with the modifications of the County of Kent Act, this Act is modified to include savings for the Port Authority's powers.

111.2 The first set of modifications to the Essex Act 1987 is to section 11 (Touting, hawking, photographing etc.). This section empowers a district council to designate certain places such that certain of the activities listed in subsection (2) cannot be done there without the district council's consent. The Order would insert text into subsection (6)(a) such that a district council is required to notify the Port Authority where a designation would affect the seashore within the limits of the Port Authority. The Order also inserts a new subsection (9A) requiring the district council to consult the Port Authority before giving consent under section 11 to the hawking, selling or offering or exposing for sale anything on the seashore. Finally, a new subsection (11) states that no part of the seashore which is owned by the port authority is to be designated without the prior agreement of the Port Authority.

111.3 Section 30 (Unauthorised structures on seashore) of the 1987 Act provides the district council with powers to regulate the placing of certain structures on the seashore. The Order would omit the words "which is vested in or under the control of the port authority" from subsection (5). The effect of this is that nothing in section 30 will affect any part of the seashore which is in the limits of the Port of London. The Order would also add a new subsection (6) which requires the district council to consult the Port Authority before consenting to any structures being placed within the area included in paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act.

111.4 Section 31 (Byelaws as to boats) of the 1987 Act extends the powers from section 76 of the Public Health Act 1936 to enable a district council to make byelaws to regulate boats in particular ways. The Order would omit the words “which is vested in or under the control of the port authority” from subsection (2)(c)(iv). The effect of this is that no byelaw made under section 31 will have effect in relation to any part of the seashore which is in the limits of the Port of London. The Order would also add a new subsection (4) before making, amending or revoking byelaws in relation to the area included in paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act a district council must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.

111.5 The Order would modify subsection 2 of section 57 (Interpretation of Head B of Part XI.). This subsection deals with the interpretation of the term “piers” and lists sections of the 1987 Act for which “piers” is to include the wharf in Leigh-on-Sea known as Bell Wharf. The Order would add section 76 (For the Protection of the Port of London Authority) to that list such that Bell Wharf, which is within the limits of the Port of London, is included in the area over which the Port Authority enjoys protections under section 76.

111.6 Section 66 (Pier byelaws) empowers Southend Council to make byelaws for certain purposes in relation to piers. The Order would insert wording into subsection (1) to require consultation with the Port Authority, and the taking into account of any representations made by them, before the making of such byelaws.

111.7 Section 83 empowers Southend Council to erect and maintain groynes on any part of the foreshore vested in them or on any other part of the foreshore with consent. The Order would insert wording to require consultation with, and the taking account of any representations from, the Port authority before the construction of such groynes.

112 Article 110 Savings and transitional provisions

112.1 Article 108 acts to bring the transitional provisions contained within Schedule 2 to the Order into effect. An explanation for each of these provisions is provided above alongside the section of the 1968 to which it relates.

113 EXTENT OF CHANGES IN HRO

113.1 The changes set out above apply only in relation to the 1968 Act as it applies to the Port Authority. Although some of the powers in the 1968 Act apply, as a result of the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992, to the Port of Tilbury Limited, a separate statutory harbour authority within the Port of London, the HRO does not confer any powers or duties on the Port of Tilbury.

114 CONCLUSION

114.1 For the reasons explained above it is considered that these modifications to the Port Authority legislation are desirable in the interests of securing the management of the harbour in an efficient and economical manner and satisfy the requirements of section 14(2)(b) of the 1964 Act and achieve the objects within Schedule 2 to the Act as detailed in paragraph 4 above.