

202[] No. 0000

HARBOURS, DOCKS, PIERS AND FERRIES

The Yarmouth (Isle of Wight) Harbour Revision Order 202[X]

<i>Made</i>	202[]
<i>Laid before Parliament</i>	202[]
<i>Coming into force</i>	202[]

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SCHEDULE 1 — REVOCATION / REPEAL

The Yarmouth (Isle of Wight) Harbour Commissioners have applied for a harbour revision order in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”).

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

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

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- (a) 1964 c. 40. Section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and schedule 12 (Part II), by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c. 48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c. 56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine Coastal Access Act 2009 (c. 23), section 315 and Schedule 21, paragraphs 1 and 3(2).
 - (b) See S.I. 2010/674.
 - (c) Section 42A was inserted, in relation to England and Wales, by section 315 of, and paragraphs 1 and 3(1) of Schedule 21 to, the Marine and Coastal Access Act 2009 (c. 23).
 - (d) For the definition of “the Minister” see section 57(1) of the Harbours Act 1964 (c. 40).
 - (e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23). The head office address of the Marine Management Organisation is located at Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH.

PART 1

PRELIMINARY

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Yarmouth (Isle of Wight) Harbour Revision Order 202[X]. and shall come into force on [DATE].
- (2) The Yarmouth (Isle of Wight) Harbour Orders 1931 to 2011 and this Order may be cited together as the Yarmouth (Isle of Wight) Harbour Orders 1931 to 202[X].
- (3) This Order extends to England and Wales.

Interpretation

- 2.—(1) In this Order –
- “the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847;
- “the 1964 Act” means the Harbours Act 1964;
- “1971 Order” means the Yarmouth (Isle of Wight) Harbour Revision Order 1971;
- “2001 Order” means the Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001;
- “2011 Order” means the Yarmouth (Isle of Wight) Harbour Revision Order 2011;
- “2006 Act” means the Companies Act 2006;
- “the Commissioners” means the Yarmouth (Isle of Wight) Harbour Commissioners;
- “the harbour” has the meaning given to it by the Yarmouth (Isle of Wight) Harbour Revision Order 2011;
- “the harbourmaster” means any person appointed as such by the Commissioners as such, and includes their deputies and assistants, and any other person for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of harbourmaster;
- “the harbour premises” means land adjacent to the wet harbour area and for the time being vested in, or occupied or administered by the Commissioners as part of the harbour undertaking and occupied wholly or mainly for the purpose of activities there carried on; which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, sheds, buildings and all other works, conveniences, land and premises which at the date of this Order includes the areas shown shaded blue on the harbour premises plan;
- “Trinity House” means the Corporation of Trinity House of Deptford Strond;
- “the undertaking” means the undertaking of the Commissioners in or in connection with the harbour as for the time being authorised;
- “vessel” includes a ship, boat, houseboat, raft, or watercraft of any description, however propelled or moved, and includes non-displacement craft, a jet bike, a personal watercraft, canoes, kayaks, stand up paddle boards, a hydrofoil vessel, a hovercraft or any amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily).
- (2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.
- (3) Reference points specified in this Order shall be construed as references to longitude and latitude reference points.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 13 and 16 to 20, 22, 23, 25, 26, 42, 43, 48, 49, 50, 84 to 90 and 95) so far as applicable for the purposes of and not inconsistent with the provisions of the Yarmouth (Isle of Wight) Harbour Orders 1931 to 2011, is hereby incorporated with this Order and the Yarmouth (Isle of Wight) Harbour Orders 1931 to 2011 subject to the modifications stated in paragraphs (2) - (9) below.

(2) Notwithstanding anything in section 33 of the 1847 Act in its application to the harbour, the harbour shall not be open for the shipping and unshipping of goods or the embarking and landing of passengers at such times as, in the opinion of the harbourmaster, the accommodation therefor is fully occupied or a case of emergency requires the temporary closure of the harbour.

(3) Section 15 of the 1847 Act shall be read and have effect as if the words from “shall forfeit” to the end of the section were substituted for the words “shall be liable on summary conviction to a fine not exceeding £100.”

(4) Section 63 of the 1847 Act shall be read and have effect as if the words “liable to a penalty not exceeding level 1 on the standard scale, and a further sum of £1” were substituted for the words “guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(5) Section 69 of the 1847 Act shall be read and have effect as if the words from “shall forfeit a sum not exceeding £2” were substituted for the words “shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(6) Section 75 of the 1847 Act shall be read and have effect as if the words “If the amount claimed in respect of any such damage as aforesaid do not exceed fifty pounds, such damage” were omitted and as if the words “Such damage as aforesaid” were added in their place.

(7) Section 76 of the 1847 Act shall be read and have effect as if the words “do not exceed” were omitted and as if the word “exceeds” was added in their place.

(8) Section 98 of the 1847 Act shall be read and have effect as if the words “provided that such sums shall not exceed £100 in total” were added thereto.

(9) In construing the provisions of the 1847 Act as incorporated with the Yarmouth (Isle of Wight) Harbour Orders 1931 – 202[X], and in the application of any such provisions to the Commissioners-

- (a) the expression “special Act” means the Yarmouth (Isle of Wight) Harbour Orders 1931 – 202[X];
- (b) the expressions “the promoters of the undertaking” and “the undertakers” means the Commissioners;
- (c) the expression “the prescribed limits” means the limits of the harbour as described in article 3 and Schedule 1 of the 2011 Order;
- (d) the word “vessel” shall have the meaning given to that word by article 2 (1) of this Order;
- (e) the word “rates” shall include mooring rates;
- (f) the reference in section 53 of the 1847 Act to notice of a direction by the harbourmaster served upon a master of a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the harbourmaster to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

PART 2

COMMISSIONERS POWERS (TRADE OR BUSINESS)

Commercial Activities

4.—(1) The Commissioners may, in addition to any other powers conferred on the Commissioners:-

- (a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company, for carrying on any part of the undertaking or carrying on at any place a trade or business of any kind,
- (c) provided that it is conducive to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner.

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

(3) The powers of the Commissioners under this article are additional to the powers of the Commissioners under section 37 (powers of harbour authorities to acquire a harbour business or shares in a harbour business) of the Docks and Harbours Act 1966(a)

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

5. The Commissioners may for the purposes of or in connection with the undertaking or for doing anything in connection with the exercise of their lawful powers subscribe for or acquire shares or securities in, or become a member of, any Company.

Power to delegate functions

6. Subject to paragraph 9B of Schedule 2 to the 1964 Act (functions which cannot be delegated under a power conferred by a harbour revision order), the Commissioners may delegate the performance of any of their functions to be carried out by a Company as is referred to in Article 4 and 5.

Commissioners' borrowing powers

7.—(1) Notwithstanding anything contained in any enactment, the Commissioners may from time to time, for the general purposes of the undertaking borrow upon the security of all or some of the harbour revenue and property and by any method or methods which it sees fit such sums of money as they consider necessary.

(2) Moneys borrowed under paragraph (1) may be applied only to the purposes to which capital money is properly applicable.

(3) Without limiting the scope of paragraph (2), purposes to which capital money is properly applicable shall be deemed to include-

- (a) any major works of repair or maintenance of any part of the works or harbour forming the undertaking;

(a) 1996 c.28; section 37(3) was repealed by the Transport and Works Act 1992 (c.42), Schedule 4 (Part II).

- (b) the payment of any interest falling due within five years immediately following the date of the borrowing of any sums of money borrowed by the Commissioners under this article;
- (c) the repayment within 12 months from the date of borrowing any sum for the time being outstanding by way of principle on any amount previously borrowed;
- (d) a payment relating to pensions paid or to be paid past or present employees of the Commissioners whose employment related to the undertaking or to the family or dependants of such persons.

Temporary borrowing powers

8. The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Commissioners may require for the purposes of the harbour undertaking.

Register of charges

9.—(1) The Commissioners must keep at their principal office a register of all charges created by them under article 7(1).

(2) The Commissioners must enter on the register in relation to each charge –

- (a) the revenues or assets charged; and
- (b) the amount of the charge and the name of the person entitled to it.

(3) The Commissioners must allow the register to be inspected during reasonable hours –

- (a) by any chargee, without charge; and
- (b) by any other person, upon payment of a reasonable fee.

(4) The fee charged by the Commissioners under paragraph 3(b) must not exceed what they consider a reasonable contribution towards the cost incurred by the Commissioners in providing facilities for the inspection.

Power to charge interest to capital

10. Where the Commissioners commence any work or operations, they may, during such period not exceeding five years from the commencement of the work or operations, charge to capital as part of the cost of the work or operations interest on any money raised to defray –

- (a) the cost of the acquisition of any lands for the purpose of the work or operations; and
- (b) the expenses of constructing or carrying out the work.

Power to invest

11. The Commissioners may invest for the purposes of this Order in any manner in which they consider desirable, the whole or any part of any sum borrowed or any other money held by the Commissioners under this Order which is required for the purposes of the undertaking.

Power to give guarantees

12. The Commissioners for the purposes of the undertaking or development or disposal of land may give a guarantee for the benefit of any person for the purposes of an undertaking carried on by them or a Company or their subsidiaries.

Power to lend money

13.—(1) In this article, “harbour operations” has the meaning given by section 57 of the 1964 Act.

(2) The Commissioners may lend money for the purpose of the harbour to –

- (a) any subsidiary of the Commissioners; or
- (b) any person carrying on or proposing to carry on harbour operations or any business in the harbour.

Meetings of Commissioners

14.—(1) Meetings of the Commissioners may be held and conducted by electronic means to allow the Commissioners to attend, speak and vote as if they were present in person. Those Commissioners attending by electronic means shall be counted towards the quorum for the meeting.

(2) For the purposes of sub-paragraph (1) electronic means has the same meaning as it has for the purposes of section 360A of the 2006 Act.

Subscriptions and donations

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

PART 3

COMMISSIONERS POWERS (MANAGEMENT OF HARBOUR)

Powers to grant tenancies and dispose of land

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

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Commissioners other than those specified in sub-paragraphs (a) to (f) of paragraph 9B of schedule 2 to the 1964 Act.

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

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

Development of land

17.—(1) The Commissioners may, subject to obtaining the necessary rights in or over land—

- (a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbour; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbour.
- (c) provided that it is conducive to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the Commissioners referred to in paragraph (1)(b) may include powers to do anything necessary or

expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Commissioners would not themselves have the power to do that thing.

Powers with respect to disposal of wrecks

18.—(1) In its application to the Commissioners, section 252 of the Merchant Shipping Act 1995^(a) shall have effect in relation to the harbour and the approaches in relation to any vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting liability, the Commissioners may recover as a debt from the owner of any vessel sunk, stranded or abandoned on or after the date of coming into force of this Order any expenses reasonably incurred by them exercising their powers under Section 252 of the Merchant Shipping Act 1995 and / or under paragraph (1) of this Order which are not reimbursed out of any proceeds of sale.

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

(4) If, before such notice expires, the Commissioners receive a counter-notice from the owner in writing that the owner desires to dispose of the vessel himself, they shall be at liberty to do so. The Commissioners shall not exercise their powers under Section 252 in relation to that vessel until after seven days from receipt of the counter-notice and of any further continuous period during which the owner of the vessel proceeds with the disposal with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to them by the Commissioners.

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

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

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

Power to repair landing places etc.

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

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

- (a) dangerous to persons or vessels using the harbour; or
- (b) a hindrance to the navigation of the harbour,
- (c) to remedy its condition to the Commissioners' satisfaction within a reasonable time (not being less than 21 days) specified in the notice.

(a) 1995 c. 21.

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

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

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

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

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

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

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

(9) In this article “owner”, “lessee” and “occupier”, in relation to a relevant feature, means the person who was the “owner”, “lessee” or “occupier” of the relevant feature at the date the notice is served, or if the “owner”, “lessee” or “occupier” of the relevant feature is not readily identifiable, the “owner”, “lessee” or “occupier” of the land on which the relevant feature is situated at the date the notice is served.

Power to dredge

20.—(1) The Commissioners, as may appear to them to be necessary or desirable for the purposes of the undertaking, may deepen, widen, dredge, scour, cleanse, alter and improve the bed of the sea and foreshore of the harbour.

(2) Subject to paragraph (3) all materials dredged up or so taken up and removed by the Commissioners in the exercise of the powers of this article shall be the property of the Commissioners and may be used, sold, deposited or otherwise disposed of as the Commissioners may think fit.

(3) No such materials shall be laid down or deposited in contravention of the provisions of any enactment as respects to the disposal of waste.

(4) All money arising from the sale or other disposition of any material evacuated, removed or recovered by the Commissioners under the provisions of this article shall, after the deduction and payment of the undertaking’s costs and expenses in obtaining the same material, be applied by the Commissioners in the management of the harbour and the furtherance of the undertaking.

(5) The exemption under section 75 of the Marine and Coastal Access Act 2009 does not apply to the Harbour.

Harbourmaster may prevent sailing of vessels

21. The harbourmaster may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to them of the payment of any charges payable in respect of –

- (a) the vessel;
- (b) passengers of the vessel; or
- (c) goods imported or exported on the vessel.

Charges for services provided other than ship, passenger and goods dues or other charges

22. The Commissioners may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig, or floating platform or any other vessel, not being a ship as defined by section 57(1) of the 1964 Act, entering, using, operating within or leaving the harbour such reasonable charges as it may determine, and sections 30 and 31 of the 1964 Act shall with all necessary modification apply to the charges authorised by this article as they may apply to ship, passenger and goods dues demanded under section 26 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them) of the 1964 Act.

Charges for services or facilities

23. In addition to Article 22 of this Order and their power to demand ship, passenger and goods dues under section 26 of the 1964 Act, the Commissioners may demand, take and recover such reasonable charges for services and facilities provided by the Commissioners at the harbour or in connection with the undertaking as it may from time to time determine.

Refusal to pay charges for landing place

24. The harbourmaster may prevent a vessel from entering the harbour or using a landing place, mooring or other facility provided by the Commissioners, if the master of the vessel refuses to pay the charges for such use.

Deposits for charges

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

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

Recovery of charges as a debt

26.—(1) In addition to any other remedy given by this Order and by the 1847 Act as incorporated with this Order, the Commissioners may recover any charges payable as a debt in any court of competent jurisdiction.

(2) Where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay the same or any part, paragraph (1) applies whether or not the Commissioners' collector has gone on board the vessel and demanded the charge pursuant to section 44 of the 1847 Act.

Power to recover expenses as a debt

27. In addition to any other remedy, the Commissioners may recover as a debt in any court of competent jurisdiction, any reasonable costs and expenses incurred by them in their recovery of any charges, rents, fees, dues, levies, or other sums which may fall lawfully due and payable to the Commissioners from whomsoever and howsoever arising.

Liens for charges

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

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

PART 4

MISCELLANEOUS

Provisions relating to the indemnity of the Commissioners

29.—(1) A Commissioner may not be found personally liable or prosecuted for any act or omission of the Commissioners, or any one of them, save where the act or omission concerned was one which the Commissioners (or, as the case may be, the Commissioner) knew to be a breach of duty or in excess of their lawful powers or concerning which the Commissioners (or, as the case may be, the Commissioner) was reckless as to whether it was such a breach.

(2) Subject always to the provisions of paragraph (1) the Commissioners shall be personally indemnified by the undertaking for any and all reasonable expenses, losses, costs and damages which they may personally incur as a result of any liability arising from the Commissioners' lawful execution of the powers granted to them in any Act, legislation or statute as may be in force at any time, or in any of Yarmouth (Isle of Wight) Harbour Orders 1931 to 20[X].

Removal of vehicles

30.—(1) If a vehicle is left within the harbour limits without the permission of the Commissioners-

- (a) in any place provided by the Commissioners for a longer period than 24 hours or such other period as may be specified in a sign displayed by the Commissioners;
- (b) in any part of the harbour where the parking of vehicles or leaving of vessels is prohibited by notice erected by the Commissioners, the Commissioners may, at the risk of the owner, remove the vehicle or cause it to be removed.;
- (c) in any part of the harbour premises, for a period longer than 24 hours after a notice giving the date and time and requiring its removal within 24 hours is left on or affixed to the vehicle by the Commissioners; or
- (d) in any place within the harbour premises where it is likely to obstruct or interfere with the use of the harbour or pose a security or safety risk; or
- (e) if it appears to the Commissioners that a vehicle has been abandoned in any part of the harbour premises, the Commissioners may, at the risk of the owner, remove the vehicle or cause it to be removed to a place of safe custody.

(2) Any notice erected under paragraph 1(a), (b) and (c) shall be conspicuously posted in or close to the place to which it relates.

(3) Where the Commissioners in exercise of the powers under this article remove a vehicle or cause it to be removed it shall as soon as practicable report that fact to a constable or to a police station.

(4) The expenses of and incidental to the removal of a vehicle under this article shall be recoverable from any person responsible.

(5) For the purposes of paragraph (4) "person responsible" means –

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under paragraph (1); or
- (b) any person by whom the vehicle was put in that place.

(6) If the Commissioners in the exercise of the powers of this article remove a vehicle to a place not readily visible from the place where it is removed the Commissioners shall, as soon as it is reasonably practicable to do so, send to the person for the time being registered as the keeper of the vehicle for the purposes of the Road Vehicles (Registration and Licencing) Regulations 2002 or any other regulations having the like effect for the time being in force, at that person's last known address, the person's registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of the article and of the place to which the vehicle has been removed.

(7) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour.

Notices

31.—(1) Except where this order expressly provides otherwise, a notice or other document required or authorised to be given for the purposes of this Order, or any direction given under this Order, must be in writing and sent by first class post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) Where a person on whom a notice or document is to be served has agreed in writing that notices may be given by email, or other electronic means, the Commissioners may provide notices by that means until such time as the person informs them in writing that they are no longer willing to receive notices or documents by email or by such other electronic means.

(4) For the purposes of section 7 of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of a person in relation to the giving of a notice or document under paragraph (1) is, if they have given an address for the purpose of receiving notices that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, their last known address at the time the notice is served.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be given on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) In the case of a notice or document to be given to a person as having an interest on, or as the occupier of, any land, it may be given by –
 - (i) addressing it to them by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land leaving it conspicuously affixed to some building or object on or near the land.
- (b) In the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited), or by handing it to a member of the crew, and
- (c) In the case of any other notice or document or a notice or document that is not capable of being served pursuant to sub-paragraph (b) it may be served by displaying it at the harbour office for the period of its duration.

Crown Rights

32.—(1) Nothing in this Order shall:

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown, or

- (b) authorise the Commissioners or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to
 - (i) His Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners, or
 - (ii) the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the prior consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, the consent in writing of two or more of such of the regular officers of the said Duchy or other such persons as may be authorised under section 39 of the said Duchy of Cornwall Management Act 1863; or
 - (iii) a government department, or held in trust for His Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1)(b) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Savings for Trinity House

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

PART 5

AMENDMENTS AND REPEALS

Amendments of the 1971 Order of the 2011 Order

34.—(1) In paragraph (4)(3) of Article 4 of the 2011 Order after the words “to all vessels or to a class of vessels designated in the direction; or” insert “(aa) to vessels in, entering, proposing to enter or leaving, the harbour; or”

(2) The definition of “vessel” in the 1971 Order and the 2011 Order is substitute the definition of “vessel” in Article 2 of this Order.

Revocation and repeal

35. On the date of this Order the enactments mentioned in the first and second columns of Schedule 1 to this Order shall be revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

Michelle Willis

Acting Chief Executive Officer

Date

An authorised employee of the Marine Management Organisation

SCHEDULES

SCHEDULE 1

Article 38

REVOCATION / REPEAL

Table 1

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
21 & 22 GEO.5., clxxxix	Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931	Section 35 (Leasing)
S.I. 1972/300	The Yarmouth (Isle of Wight) Harbour Revision Order 1971	Article 3 (Incorporation of 1847 Act) Article 9 (Wrecks)
S.I. 2002/311	The Yarmouth (Isle of Wight) Harbour Revision Order 2002	Whole order

EXPLANATORY NOTE

(This note is not part of the Order)

This order, made on the application of Yarmouth (Isle of Wight) Harbour Commissioners, modernises and consolidates the statutory harbour powers applying in relation to Yarmouth Harbour and provides for—

(1) Incorporation of certain provisions of the Harbours, Docks and Piers Clauses Act 1847, with amendments (article 3).

(2) Powers to trade and to carry on business (article 4) and to set up or become a member of a corporate entity (article 5) and to delegate functions (article 6).

(3) Modern powers relating to finances including unlimited borrowing powers (article 7 and 8), powers to grant charges (article 6). A register of all charges to be kept and available for inspection (article 9). A power to charge interest to capital (article 10). Powers to invest (article 101) give guarantees (article 12) and to lend money (article 13).

(4) A power to enable the Commissioners to participate in meetings remotely (article 14).

(5) A power to make payment of subscriptions or donations (article 15).

(6) Power to grant tenancies and dispose of land (article 16), power to develop land (article 17).

(7) Powers relating to disposal of wrecks (article 18), power to repair landing places (article 19), power to dredge (article 20).

(8) A modern suite of charging powers (articles 21 – 26) including powers to prevent sailing of vessels (article 21) and to recover charges (article 26) and expenses (article 27) as a debt.

(9) Indemnity provisions for Commissioners (article 29).

(10) Powers to remove and dispose of vehicles (article 30).

(11) Provisions as to the giving of Notices (article 31).

(12) Savings for the Crown (article 32) and Trinity House (article 33).

(13) To facilitate the above, the Order amends the 1971 Order as set out in article 34 and repeals or revokes the provisions of the Act and Orders set out in the Schedule to the Order (article 35 and the Schedule to the Order).

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