

**2011 No. 3032**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Portsmouth (Continental Ferry Port Berth 2 Extension)  
Harbour Revision Order 2011**

<i>Made</i> - - - -	<i>16th December 2011</i>
<i>Laid before Parliament</i>	<i>21st December 2011</i>
<i>Coming into force</i> - -	<i>16th January 2012</i>

Portsmouth City Council has applied to the Marine Management Organisation in accordance with section 14(2)(a) of the Harbours Act 1964(a) for a harbour revision order under section 14.

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

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

**PART 1**  
**PRELIMINARY**

**Citation and commencement**

**1.**—(1) This Order may be cited as the Portsmouth (Continental Ferry Port Berth 2 Extension) Harbour Revision Order 2011 and shall come into force on 16th January 2012.

(2) The Portsmouth Mile End Quay Harbour Revision Orders 1966 to 1999 and this Order may be cited together as the Portsmouth Harbour Revision Orders 1966 to 2011.

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

## Interpretation

### 2.—(1) In this Order –

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

“the authorised works” means all or any of the works authorised by article 4(1) of this Order or any part of those works, and where any part of those works remain uncompleted, includes the site thereof;

“the City Council” means the Portsmouth City Council;

“deposited plan” and “deposited sections” means the plan and sections drawn on one sheet of paper prepared in triplicate, signed by the Chief Executive Officer of the Marine Management Organisation and marked “Plan and Sections referred to in the Portsmouth (Continental Ferry Port Berth 2 Extension) Harbour Revision Order 2011”, of which one copy was deposited at the office of the City Solicitor of the City Council and two copies at the office of the Marine Management Organisation;

“Harbour Master” means the person appointed as such by the City Council and includes his deputies and assistants appointed by the City Council;

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

“the limits of deviation” means the limits of deviation shown on the deposited plan;

“the Mile End Quay undertaking” means the undertaking of the City Council authorised by the Portsmouth Mile End Quay Harbour Revision Orders 1966 to 1999 and the Mile End Gardens (Portsmouth) Act 1978(b) and (save in articles 4 and 6) this Order;

“Queen’s Harbour Master” means the person for the time being appointed to be Queen’s Harbour Master of the Dockyard Port of Portsmouth under the Dockyard Ports Regulation Act 1865(c);

“tidal work” means so much of the authorised works as is on, under or over tidal waters or tidal lands below the level of high water;

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

“vessel” includes every description of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

(2) All distances stated in any description of works or powers shall be construed as if the words “or thereabouts” were inserted after each distance.

## Incorporation of Act of 1847

3.—(1) Subject to the following provisions of this article, the Act of 1847 (except sections 6 to 13, 16 to 20, 23, 25 to 27, 31, 48 to 50, 67, 79 to 82, 84 to 90, 97 and 98 and so much of the proviso to section 83 as follows the words “the special Act”), so far as the same is applicable for the purposes of, and is not inconsistent with, the provisions of this Order, is hereby incorporated with this Order.

### (2) In the Act of 1847 so incorporated –

(a) section 15 of the Act of 1847 shall have effect as if, for the words after “in default thereof” to the end of the section, there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale”;

(b) section 34 of the Act of 1847 shall have effect as if, after the word “may”, there were inserted the words “(on producing, if so required, a duly authenticated document showing his authority)”;

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(a) 1847 c. 27; section 63 was amended by the Criminal Justice Act 1982 (c.48), section 46 and by the Decimal Currency Act 1969 (c.19), section 10(1) and section 69 was amended by the Decimal Currency Act 1969 (c.19), section 10(1).

(b) 1978 c. vii.

(c) 1865 c. 125.

- (c) section 63 of the Act of 1847 shall have effect as if the words “and a further sum of £1 for every hour that such vessel shall remain within the limits aforesaid, after a reasonable time for removing the same has expired after such requisition” were omitted; and
- (d) section 69 of the Act of 1847 shall have effect as if for the words after “if he fails so to do” to the end of the section there were substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(3) In the construction of the Act of 1847 so incorporated the expression “the harbour master” means the person appointed as such by the City Council and includes his deputies and assistants appointed by the City Council, the expression “the special Act” means this Order and the expression “vessel” has the meaning assigned to it by article 2(1).

(4) For the purposes of section 83 of the Act of 1847 so incorporated, section 236 to 238 of the Local Government Act 1972(a) shall apply to this Order as if it were such an enactment as is referred to in the said section 236, and:

- (a) for the purposes of the said section 236 the confirming authority for bye-laws made under the said section 83 shall be the Secretary of State for Transport; and
- (b) the said section 236 shall have effect as if in its subsection (7) after the word “confirm” where it first occurs the words “with or without modification” were inserted.

(5) If the Secretary of State, on considering bye-laws relating to the Mile End Quay undertaking made by the City Council and submitted under the said section 236 as having effect in accordance with paragraph (4), proposes to make a modification which appears to him to be substantial, then –

- (a) he shall inform the City Council as appropriate and require it to take any steps he considers necessary for informing persons likely to be concerned with the modification; and
- (b) he shall not confirm the bye-laws until such period has elapsed as he thinks reasonable for the City Council and other persons who have been informed of the proposed modification to consider and comment on it.

## PART 2

### HARBOUR REGULATIONS

#### **Power to construct works**

4.—(1) Subject to the provisions of this Order, the City Council may, when it has acquired the necessary lands or obtained sufficient interests therein, make and maintain within the limits of deviation the following works: two mooring dolphins extending the line of Berth 2 of the Mile End Quay undertaking in a westerly direction for a distance of 49.4 metres.

(2) The City Council may within the limits of deviation extend, enlarge, alter, replace or re-lay the authorised works.

(3) The City Council may authorise a person to carry out the authorised works, as agent of the City Council.

#### **Power to Deviate**

5. In constructing the authorised works the City Council or a person authorised by the City Council to carry out the authorised works may deviate laterally from the lines or situations shown on the deposited plan to the extent of the limits of deviation and may divert vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be found necessary or convenient.

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(a) 1972 c.70; section 236(1) was amended by the Local Government Act 1985 (c.51), section 84 and Schedule 14, paragraph 31(1).

### **Further powers as to works**

6. Subject to the provisions of this Order, the City Council or a person authorised by the City Council to carry out the authorised works may, in connection with the construction of those works, enclose and reclaim from the foreshore and bed of the sea, and may hold and use as part of the Mile End Quay undertaking, so much of the foreshore and bed of the sea as is situated within the limits of deviation and is required for, or in connection with, the construction of those works.

### **Subsidiary works**

7.—(1) Subject to paragraph (2) and to the other provisions of this Order, the City Council or a person authorised by the City Council to carry out the authorised works may, in connection with those works and within the limits of deviation, construct, erect, lay down, place, maintain, remove, replace, work or use all necessary or convenient bridges, abutments, booms, pontoons, fenders, bollards, ladders, tanks, pumps, conduits, pipes, wires, mains, cables, rails, signals, conveyors, cranes, lifts, hoists, passenger side loaders, drops, weighbridges, stairs, stages, platforms, catwalks, landing places, dolphins, piles, buoys, moorings, beacons, approaches, buildings, sheds, offices, depots, roads, walls, fences, gates, equipment, machinery and appliances and such other works and apparatus as they think fit.

(2) Electrical works, mechanical works or equipment constructed, erected, laid down, placed, maintained, worked or used, pursuant to the powers conferred by this article, shall be so constructed, erected, laid down, placed, maintained, worked or used, that any electricity generated or conveyed by any such works or equipment used therein or in connection therewith does not cause interference (whether by induction or otherwise) with any telecommunications apparatus or with telecommunication by means of any such apparatus.

### **Power to appropriate all or part of the Mile End Quay undertaking for particular trades etc**

8.—(1) Notwithstanding anything in any statutory provision of local application the City Council or a person authorised by the City Council to manage the Mile End Quay undertaking may from time to time for the purpose of or in connection with the management of the Mile End Quay undertaking set apart and appropriate all or any part of it for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessel, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the City Council may think fit.

(2) No person or vessel shall make use of any part of the Mile End Quay undertaking so set apart and appropriated without the consent of the Harbour Master and the Harbour Master may order any person or vessel making use thereof without such consent to leave or be removed and the provisions of section 58 (harbour master may remove vessels within docks &c) of the Act of 1847 shall extend and apply to and in relation to any such vessel.

### **Jurisdiction and directions of Harbour Master**

9.—(1) Subject to paragraph (2), the limits within which the powers of the Harbour Master may be exercised under and subject to the provisions of the Act of 1847 shall extend to a distance of 100 metres in every direction from the authorised works.

(2) The powers exercisable by virtue of this article shall be limited to vessels going to, moored at, or departing from, the Mile End Quay undertaking.

(3) Section 52 (powers of harbour master) of the Act of 1847 shall extend to empower the Harbour Master to give directions prohibiting the mooring of vessels in or near any approach to the authorised works.

(4) In the case of conflict between any direction given by the Harbour Master and any direction given by the Queen's Harbour Master, the direction given by the Queen's Harbour Master shall prevail.

### **Recovery of rates in respect of vessels**

10. In addition to the remedy for the recovery of rates given by section 44 (recovery of tonnage rates by distraint and sale of ship and tackle) of the Act of 1847, and whether or not the collector of rates has gone on board the vessel and demanded any rates which the master of the vessel has neglected or refused to pay, the City Council or an officer or manager authorised by the City Council may recover the rates as a debt in any court of competent jurisdiction.

### **Harbour Master may prevent sailing of vessels**

11. The Harbour Master may prevent the removal or sailing from the authorised works of any vessel until evidence has been produced to him of the payment of any ship, passenger and goods dues and other charges payable in respect of the vessel or passengers thereon or the goods imported or exported therein.

### **Fine for obstructing works**

12. Any person who, without lawful authority, intentionally or recklessly obstructs any person acting under the authority of the City Council, or a person authorised by the City Council to carry out the authorised works, in setting out the lines of those works, or who moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

13.—(1) In case of injury to, or destruction or decay of, a tidal work or any part of it forming part of the Mile End Quay undertaking the City Council shall as soon as reasonably practicable notify Trinity House and the Queen's Harbour Master and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

(2) If the City Council fails to notify Trinity House or the Queen's Harbour Master as required by paragraph (1) or, subject to paragraph (3), to comply in any respect with a direction given under that paragraph, it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) It shall be a defence for the City Council to prove that all due diligence was used to secure compliance with a direction under paragraph (1).

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

14.—(1) Where a tidal work forming part of the Mile End Quay undertaking is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the City Council at its own expense either to repair and restore the work or any part of it, or to remove the work and restore its site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion of it in any notice under this article.

(3) If on the expiration of thirty days from the date when a notice under this article is served upon the City Council it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; and any expenditure incurred by him in so doing shall be recoverable from the City Council as a debt in any court of competent jurisdiction.

### **Survey of tidal works**

15. If the Secretary of State at any time deems it expedient to do so, he may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the City Council as a debt in any court of competent jurisdiction.

### **Lights on tidal works during construction**

16.—(1) The City Council shall at or near a tidal work during the whole time of its construction, alteration, enlargement, replacement, re-laying or extension exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) Subject to paragraph (3), if the City Council fails to comply in any respect with a direction given under paragraph (1), it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) It shall be a defence for the City Council to prove that all due diligence was used to secure compliance with a direction under paragraph (1).

### **Permanent lights on tidal works**

17.—(1) After the completion of a tidal work the City Council shall at its outer extremity exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) Subject to paragraph (3), if the City Council fails to comply in any respect with a direction given under paragraph (1), it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) It shall be a defence for the City Council to prove that all due diligence was used to secure compliance with a direction under paragraph (1).

### **Recovery of fines**

18. All fines and forfeitures recoverable under the provisions of the Act of 1847 as incorporated with this Order or under any bye-law made in pursuance of section 83 of the Act of 1847 as so incorporated may be recovered summarily.

### **Power to lease**

19. Once the construction of the authorised works is complete, the City Council or an officer or manager authorised by the City Council may, for harbour purposes, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, equipment or other property forming part of the Mile End Quay undertaking for such period or periods and on such terms and conditions as shall be agreed between the City Council or the officer or manager and the person taking the same.

### **Extension of Section 86 of Portsmouth Corporation Act 1959**

20. Section 86 (powers with respect to disposal of wrecks) of the Portsmouth Corporation Act 1959(a) as having effect in accordance with the Portsmouth Mile End Quay Harbour Revision Orders 1966 to 1994(b) shall have effect as if the references to any approach to the Flathouse Wharf and Quay in subsections (1) and (7) of that section included a reference to any approach to the authorised works.

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(a) 1959 c. xlv.

(b) See article 21 of S.I.1966/982, article 21 S.I.1973/2135, article 15 of S.I.1988/1519, article 24 of S.I.1991/993, article 21 of S.I.1993/2733 and article 23 of S.I.1994/2733.

**PART 3**  
**MISCELLANEOUS AND GENERAL**

**Crown rights**

**21.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the City Council (or other person acting on their behalf) to take, use, enter upon or in any manner interfere with, any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) –

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners, or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to the conditions and terms considered necessary.

**Saving rights of Queen’s Harbour Master**

**22.** Nothing in this Order shall take away, alter, prejudice or affect the jurisdiction or any rights, powers, authorities or privileges of the Queen’s Harbour Master.

**Saving rights of Trinity House**

**23.** Nothing in this order shall prejudice or derogate from any of the rights or privileges of Trinity House.

**Inquiries by Secretary of State**

**24.** The Secretary of State may cause such inquiries to be held as he may consider necessary for the purposes of the exercise of any of his powers or duties under this Order, and subsections (2) to (5) inclusive of section 250 of the Local Government Act 1972(a) shall apply to any such inquiry as if it were a local inquiry held in pursuance of subsection (1) of that section.

Signed by authority of the Marine Management Organisation

*J. Cross*  
Chief Executive Officer

16th December 2011

An authorised employee of the Marine Management Organisation

**EXPLANATORY NOTE**

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

This Order empowers Portsmouth City Council (“the City Council”) as the harbour authority for the Continental Ferry Port (the Mile End Quay undertaking – defined in article 2(1)) to construct works extending Berth 2 in a westerly direction for 49.4 metres or thereabouts by the construction of two mooring dolphins (article 4) within the limits of deviation on the deposited plan (defined in

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(a) 1972 c.70; section 250 was amended in subsection (2) by the Statute Law (Repeals) Act 1989 (c.43), section 1(1) and Schedule 1, Part IV, in subsection (3) by the Criminal Justice Act 1982 (c.48), sections 38 and 46 and in subsection (4) by the Housing and Planning Act 1986 (c.63), section 49(2) and Schedule 12, Part III.

article 2(1)(article 5), and confers further powers as to the foreshore and bed of the sea in respect of those works (article 6) and as to subsidiary works (article 7).

The Order also empowers the City Council-

(1) to set apart and appropriate all or any part of the Mile End Quay undertaking for the use and accommodation of a particular trade, person, vessel or class of vessel or goods (article 8);

(2) to recover rates which the master of a vessel has neglected or refused to pay as a debt in any court of competent jurisdiction (article 10); and

(3) once the construction of those works is complete, for harbour purposes, to lease, or grant the use or occupation of, any lands, works, buildings, equipment or other property forming part of the Mile End Quay undertaking (article 19).

The Order incorporates provisions of the Harbours, Docks and Piers Clauses Act 1847 (c.27) subject to certain modifications (article 3) and all fines or forfeitures recoverable under that Act so incorporated or under bye-laws made in pursuance of section 83 of that Act may be recovered summarily (article 18).

The Harbour Master (defined in article 2(1)) may prevent the removal or sailing from those works of any vessel until payment of any ship, passenger and goods dues and other charges (article 11).

The Order creates an offence of, without lawful authority, intentionally or recklessly obstructing the carrying out of those works with a fine on summary conviction not exceeding level 3 on the standard scale (article 12).

Articles 13 to 17 make provision against danger to navigation and for the abatement of works abandoned or decayed, the surveying of a tidal work (defined in article 2(1)) and the lighting of tidal works during construction and permanently.

The Secretary of State may cause inquiries to be held for the purposes of the exercise of any of his powers or duties under the Order (article 24).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen and the impact on business is minimal.

The deposited plan and sections may be inspected during working hours at the office of the City Solicitor, Portsmouth City Council, Civic Offices, Guildhall Square, Portsmouth PO1 2PX.

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