

2007 No. 1554

HARBOURS, DOCKS, PIERS AND FERRIES

**The St Mary's (Isles of Scilly) Harbour Revision
Order 2007**

Made - - - - - *24th May 2007*

Coming into force - - - *31st May 2007*

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[DfT 14099]

His Royal Highness Charles Philip Arthur George Prince of Wales Duke of Cornwall and Rothesay Earl of Chester and Carrick Baron of Renfrew Lord of the Isles and Great Steward of Scotland has applied for a harbour revision order under section 14 of the Harbours Act 1964(a);

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State (being the appropriate Minister under section 14(7)(b) of that Act) in exercise of the powers conferred by that section and now vested in him(c) makes the following Order—

Citation and commencement

1. This Order may be cited as the St Mary's (Isles of Scilly) Harbour Revision Order 2007 and shall come into force on 31st May 2007.

Interpretation

2.—(1) In this Order—

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

“the Order of 1890” means the St Mary's (Scilly) Pier Order 1890 confirmed by the Pier and Harbour Confirmation (No. 4) Act 1890(e);

“the authorised officer” means the person appointed as such by the undertaker or, if more than one person is so appointed, any of those persons;

“deposited plans” and “deposited sections” mean respectively plans and sections prepared in triplicate, signed by the Head of Ports Division in the Department for Transport and marked “The St Mary's (Isles of Scilly) Harbour Revision Order 2007”, two copies of which have been deposited at the offices of the Department for Transport, the other at the offices of the undertaker;

“harbour” has the same meaning as in section 2 of the Order of 1890 and includes the works and the harbour premises;

“harbour master” means any person appointed as such pursuant to section 51 of the Act of 1847;

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

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

“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 plans;

“tidal works” means so much of any work authorised by this Order 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;

“the undertaker” means His said Royal Highness or other the possessor of the Duchy of Cornwall or other the undertaker for the purposes of the Order of 1890 and this Order;

“undertaking” means the harbour undertaking for the time being of the undertaker;

(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, section 40 and Schedule 12 (Part II) and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 1.

(b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(c) S.I. 1981/238.

(d) 1847 c. 27.

(e) 1890 c. xcvi.

“vessel” means a ship, boat, raft or water craft of any description however propelled or moved, and includes a displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

“works” means the works authorised by this Order, or as the case may require, any part thereof and includes any work constructed pursuant to article 4 (Power to construct works).

(2) All areas, directions, distances, lengths, widths and other measurements as stated in any description of works, powers or lands other than article 5 (Power to deviate) shall be construed as if the words “or thereabouts” were inserted after each such area, direction, distance, length, width and other measurement and any reference in a description of works to a point shall be construed as a reference to an Ordnance Survey National Grid reference point.

(3) Any reference in this Order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order.

Incorporation of Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, 42, 48 to 50, 67 and 77), so far as applicable for the purposes of and not inconsistent with the provisions of this Order, is incorporated with and forms part of this Order subject to the modifications in paragraphs (2) to (4).

(2) Section 63 shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) For the purposes of the Act of 1847 as so incorporated—

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the undertaker and the expression “the harbour, dock, or pier” means the harbour;
- (b) for the meaning assigned to the word “vessel” by section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2(1);
- (c) section 53 of the Act of 1847 shall not be construed as requiring the harbour master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master.

Power to construct works

4.—(1) Subject to the provisions of this Order, the undertaker may in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown thereon and according to the levels shown on the deposited sections, construct and maintain the works hereinafter described, with all necessary works and conveniences connected therewith—

Work No. 1

A concrete vertical retaining wave wall enclosing an area of 0.288 hectares of the bed of the sea commencing at the car park in front of Tregarthen’s Hotel 15 metres north of the existing quay wall at reference point SV010707090104 and extending in a north-easterly, then northerly, then north-westerly direction for a distance of 216 metres and terminating on Rat Island at a point at SV010877090153; the enclosed area to constitute a widening on the west side of The Quay and to be used as a vehicular and pedestrian access.

Work No. 2

As to part, a concrete vertical retaining wave wall and as to the remainder a quay face forming a berth for vessels enclosing an area of 0.252 hectares of the bed of the sea commencing on Rat Island at a point at SV010912090189 and extending in a north-easterly direction for a distance of 130 metres then in a south-easterly direction for a distance of 30 metres then in a south westerly direction for a distance of 28 metres and terminating on the north-eastern point of The Quay at a point at SV010964090271; the enclosed area to constitute a widening and lengthening on the western and northern side of The Quay and to be used for freight and passenger handling.

(2) The undertaker may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and may by means of those works, enclose and reclaim so much of the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the undertaker may, within the limits of deviation, reconstruct, extend, enlarge, replace or relay the works and may maintain the same as reconstructed, extended, enlarged, replaced or relaid.

(4) The works shall for all purposes form part of the undertaking.

Power to deviate

5. Subject to the provisions of this Order, in carrying out Work Nos. 1 and 2 the undertaker may deviate laterally from the lines or situations thereof as shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of the works as 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.

Subsidiary works

6.—(1) The undertaker may from time to time within the limits of deviation provide and operate such harbour facilities, together with works ancillary to those facilities, as may be necessary or convenient for the construction of the works or the operation of the undertaking, and for this purpose the undertaker may provide, construct and maintain roads, buildings, sheds, offices, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lighting columns, weighbridges, stairs, ladders, stages, platforms, catwalks, equipment, machinery and appliances and such other works and conveniences as may be necessary or expedient.

(2) Without prejudice to paragraph (1), the undertaker may within the limits of deviation carry out and maintain such other works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance or use of the works including—

- (a) works for the accommodation or convenience of vessels (including dolphins and pontoons); and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

Power to dredge for purposes of works

7.—(1) The undertaker, for the purposes of constructing and maintaining the works may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the sea and foreshore of the harbour and may blast any rock within the harbour.

(2) Subject to paragraph (3), all materials dredged up or removed by the undertaker in exercise of the powers conferred by this article shall continue to belong to the person from whose land they were dredged or removed.

(3) No such materials shall be laid down or deposited—

- (a) in contravention of the provisions of any enactment as respects the disposal of waste; or
- (b) in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Obstruction of work

8. Any person who intentionally obstructs any person acting under the authority of the undertaker in setting out the lines of or in constructing the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works to be deemed part of undertaking

9. The works shall be deemed for all purposes to be part of the undertaking and all byelaws, rules and regulations of the undertaker for the time being in force relating to the undertaking shall apply to the works and may be enforced by the undertaker accordingly.

Tidal works not to be executed without approval of Secretary of State

10.—(1) A tidal work shall not be demolished, constructed, renewed, reconstructed or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is demolished, constructed, renewed, reconstructed or altered in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing to the authorised officer require the tidal work or any part thereof to be removed and the site thereof to be restored to its former condition; and if on the expiration of 30 days from the date when the notice is served upon the authorised officer the requirements of the notice have not been complied with, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may himself remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be paid to the Secretary of State by the authorised officer.

Survey of tidal works

11. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work or a site upon which it is proposed to construct the work, and any expense incurred by him in such a survey and examination shall be paid to the Secretary of State by the authorised officer.

Provision against danger to navigation

12. In the case of injury to or destruction or decay of a tidal work or any part thereof, the authorised officer shall forthwith notify Trinity House 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.

Abatement of works abandoned or decayed

13.—(1) Where a tidal work is abandoned or suffered to fall into decay the Secretary of State may by notice in writing to the authorised officer require—

- (a) the tidal work (or any part thereof) to be repaired and restored, or
- (b) the work to be removed and the site thereof to be restored to its former condition,

to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work authorised by this Order and 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 thereof, in any notice under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the authorised officer the requirements of the notice have not been complied with, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be paid to the Secretary of State by the authorised officer.

Lights on tidal works during construction

14. During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the authorised officer shall at the outer extremity thereof every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

Permanent lights on tidal works

15. After completion of a tidal work the authorised officer shall at the outer extremity thereof every night from sunset to sunrise exhibit 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.

Period for completion of works

16.—(1) Subject to paragraph (2), if the work is not completed within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the authorised officer allow, then on the expiration of that period or such extended time (as the case may be) the powers by this Order granted to the undertaker for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 4 (Power to construct works) or article 6 (Subsidiary works).

Planning, etc. jurisdiction

17.—(1) During the period beginning with the date when this Order comes into force and ending on the accretion date, the area within the limits of deviation shall, to the extent that it lies outwith the Isles of Scilly, for the purposes of the Control of Pollution Act 1974(a), the Environmental Protection Act 1990(b) and the Town and Country Planning Act 1990(c), be annexed to and incorporated with the Isles of Scilly.

(2) On the accretion date, the area of the whole or of so much of the works authorised by article 4 (Power to construct works) and article 6 (Subsidiary works) as shall have been completed or substantially commenced shall to the extent that it lies outwith the Isles of Scilly be annexed to and incorporated with the Isles of Scilly.

(3) In this article “accretion date” means whichever of the following dates first occurs, namely, the date when the works so authorised have been completed or the date when the powers conferred by article 16 (Period for completion of works) shall cease to have effect.

(4) This article is subject to article 20 (Crown rights).

Power to appropriate lands and works for particular uses, etc.

18.—(1) Notwithstanding anything in any statutory provision of local application the undertaker may from time to time for the purpose of or in connection with the management of the harbour set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the undertaker thinks fit.

(a) 1974 c. 40.

(b) 1990 c. 43.

(c) 1990 c. 8.

(2) No person or vessel shall make any use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the undertaker and —

- (a) the harbour master, or as the case may be such officer, may order any person or vessel making use thereof without such consent to leave or be removed; and
- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Act of 1847 shall extend and apply with the necessary modifications to and in relation to any such vessels.

Saving for Trinity House

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

Crown rights

20.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown including (without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall) the Duchy of Cornwall and in particular and without prejudice to the generality of the foregoing, nothing in this Order authorises the undertaker 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 portion 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 such conditions and upon such terms as may be considered necessary or appropriate.

Disapplication of regulation 60 of Conservation (Natural Habitats &c) Regulations 1994

21.—(1) Regulation 60 of the Conservation (Natural Habitats &c) Regulations 1994(a) (“the Habitats Regulations”) shall not apply to any planning permission which relates to the works and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

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

- (a) do not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) are not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitats Regulations.

Signed by authority of the Secretary
of State for Transport

24th May 2007

Phil Carey
Head of Ports Division
Department for Transport

(a) S.I. 1994/2716.
(b) S.I. 1995/418.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Duchy of Cornwall as the harbour authority for St Mary's (Isles of Scilly) to construct and maintain works and other harbour facilities at the harbour.

The Order also enables the Duchy to set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or goods.

£3.00

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