
STATUTORY INSTRUMENTS

1993 No. 2733

HARBOURS, DOCKS, PIERS AND FERRIES

**The Portsmouth Mile End Quay (Berth No.
2 Extension) Harbour Revision Order 1993**

Made - - - - *3rd November 1993*

Coming into force - - *5th November 1993*

Whereas the Portsmouth City Council have applied for a harbour revision order under section 14 of the Harbours Act 1964(1);

And whereas the Secretary of State for Transport has, in pursuance of paragraph 1A of Schedule 3 to the said Act(2), determined that the application is made in relation to a project which falls within Annex II to Council Directive 85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment but whose characteristics do not require that it should be made subject to an environmental assessment;

And whereas objections to the application made pursuant to paragraph 3(a) of the said Schedule 3 have been withdrawn:

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(4)), in exercise of the powers conferred by that section and now vested in him(5), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Portsmouth Mile End Quay (Berth No. 2 Extension) Harbour Revision Order 1993 and shall come into force on 5th November 1993.

(2) The Portsmouth Mile End Quay Harbour Revision Orders 1966 to 1991 and this Order may be cited as the Portsmouth Mile End Quay Harbour Revision Orders 1966 to 1993.

(1) 1964 c. 40; section 14 and Schedule 3 were amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4, 12 and 14, and by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraphs 1 and 10.
(2) Paragraph 1A was inserted by the Harbour Works (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1336), regulations 3 and 4 and amended by S.I.1992/1421.
(3) OJ No. L175, 5.7.85, p. 40.
(4) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
(5) S.I. 1981/238.

Interpretation

2.—(1) In this Order—

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847⁽⁶⁾;

“the authorised works” means the works authorised by this Order or any part of those works and, where any part of those works remains uncompleted, includes the site thereof;

“the Council” means the Portsmouth City Council;

“deposited plan” and “deposited sections” mean respectively the plan and sections prepared in duplicate signed by an Assistant Secretary in the Department of Transport and marked “Plan and Sections referred to in the Portsmouth Mile End Quay (Berth No.2 Extension) Harbour Revision Order 1993”, of which one is deposited at the offices of the Department of Transport and one at the offices of the Head of Legal Services of the Council;

“enactment” means any enactment whether public general or local and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“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;

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

“the Mile End Quay undertaking” means the undertaking of the Council 1966 to 1991, by this Order, and by the Mile End Gardens (Portsmouth) Act 1978⁽⁷⁾;

“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⁽⁸⁾;

“tidal work” means so much of the authorised works as is on, under or over any part of the seashore lying below the level of high water;

“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 and lengths stated in any description of works, powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance and length.

Incorporation of Act of 1847

3.—(1) Subject to paragraph (2) below, the Act of 1847 (except sections 6 to 13, 16 to 20, 23, 25 to 27, 31, 48, 49, 50, 67, 81, 82, 84 to 90, 95, 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, or varied by, the provisions of this Order, is hereby incorporated with this Order.

(2) In the Act of 1847 as so incorporated—

(a) section 15 shall have effect as if, for the words from “shall forfeit” 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 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)”;

(c) section 63 shall have effect as if the words “and a further sum of twenty shillings 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

⁽⁶⁾ 1847 c. 27.

⁽⁷⁾ 1978 c.vii.

⁽⁸⁾ 1865 c. 125.

- (d) section 69 shall have effect as if for the words from “shall forfeit” 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 as so incorporated the expression “the special Act” shall mean this Order, and the expression “vessel” shall have the meaning assigned to it by article 2(1) of this Order.
- (a) (4) (a) For the purposes of section 83 of the Act of 1847 as so incorporated, sections 236 to 238 of the Local Government Act 1972(9)) shall apply to this Order as if it were such an enactment as is referred to in the said section 236, and
- (i) for the purposes of the said section 236 the confirming authority for byelaws made under the said section 83 shall be the Secretary of State; and
 - (ii) the said section 236 shall have effect as if in subsection (7) thereof after the word “confirm” where it first occurs the words “with or without modification” were inserted.
- (b) If the Secretary of State, on considering byelaws made by the Council relating to the Mile End Quay undertaking and submitted under the said section 236 as having effect in accordance with paragraph (a) above, proposes to make a modification which appears to him to be substantial, then
- (i) he shall inform the Council and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification; and
 - (ii) he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the Council and other persons who have been informed of the proposed modification to consider and comment on it.

Power to construct works

4.—(1) Subject to the provisions of this Order, the Council may, when they have acquired the necessary lands or obtained sufficient interests therein, make and maintain, within the limits of deviation, the following works in the City of Portsmouth: a quay and reclamation south and west of the existing Portsmouth Continental Ferry Port Berth Number 2 within an imaginary line commencing at the north west corner of the existing Berth Number 2 structure at point 463877 101682, passing in a west south-westerly direction for a distance of 75 metres to point 463806 101652, thence in a south south-easterly direction for a distance of 38 metres to point 463820 101620, thence in an east north-easterly direction for a distance of 95 metres to point 463908 101654, thence continuing generally in the same direction for a distance of 116 metres to the northern face of the round dolphin situated at point 464021 101677, thence passing in a north-easterly direction for a distance of 13 metres to the south-west corner of the existing Berth Number 2 bank seat at point 464029 101687 and thence generally following along the line of the existing quay to return to the point of commencement. The points specified in this paragraph are Ordnance Survey National Grid reference points.

(2) The council may within the limits of deviation extend, enlarge, alter, replace or relay the authorised works.

(3) The Council may authorise any person to carry out the authorised works.

Power to deviate

5. In constructing the authorised works the Council may deviate laterally from the lines or situations thereof shown on the deposited plan to the extent of the limits of deviation and may deviate

vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards and to such extent downwards as may be found necessary or convenient.

Further powers as to works

6. Subject to the provisions of this Order, the Council may, in connection with the construction of the authorised 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 situate within the limits of deviation and is required for, or in connection with, the construction of the authorised works.

Subsidiary works

7.—(1) Subject to paragraph (2) below and to the other provisions of this Order, the Council may, in connection with the authorised 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, 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 or equipment constructed, erected, laid down, or placed or maintained, worked or used pursuant to the powers conferred by this article shall be so constructed, erected, laid down or placed, and so maintained, worked or used, that any electricity generated or conveyed by any such works or equipment or 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 lands and works for particular trades etc

8. Notwithstanding anything in any statutory provision of local application the Council 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 any part of the authorised works 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 Council may think fit.

Limits of Harbour Master's jurisdiction

9.—(1) Subject to the provisions of paragraph (2) below, the limits within which the powers of the Harbour Master of the Council may be exercised under and subject to the provisions of the act of 1847 as incorporated with this Order, and all other powers enabling him in that behalf 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 authorised works.

(3) Section 52 of the Act of 1847 as incorporated with this Order shall extend to empower the Harbour Master of the Council to give directions prohibiting the mooring of vessels in or near to any approach to the authorised works.

(4) In the case of conflict between any direction given by the Harbour Master of the Council 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 given by section 44 of the Act of 1847 as incorporated with this Order (recovery of rates in respect of a vessel by distraint and sale of the vessel and its tackle), 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 Council may recover such rates as a debt in any court of competent jurisdiction.

Fine for obstructing works

11. Any person who intentionally or recklessly obstructs any person acting under the authority of the Council in setting out the lines of the authorised 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.

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

12.—(1) A tidal work shall not be constructed, altered, enlarged, replaced, relaid or extended 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 constructed, altered, enlarged, replaced, relaid or extended in contravention of this article—

- (a) the Secretary of State may by notice in writing require the Council at their own expense to remove the tidal work or any part thereof and to restore the site thereof to its former condition; and, if on the expiration of thirty days from the date when the notice is served upon the Council they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, he may 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 recoverable from the Council as a debt in any court of competent jurisdiction.

Provision against danger to navigation

13.—(1) In case of injury to or destruction or decay of a tidal work or any part thereof the 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 Council fail to notify Trinity House or the Queen's Harbour Master as required by paragraph (1) above or to comply in any respect with a direction given under that paragraph, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

14.—(1) Where a tidal work is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Council at their own expense either to repair and restore the work or any part thereof, or to remove the work and restore the site thereof 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 thereof 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 Council they have 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 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 Council as a debt in any court of competent jurisdiction.

Permanent lights on tidal works

16.—(1) After the completion of a tidal work the Council shall at the outer extremity thereof 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) If the Council fail to comply in any respect with a direction given under paragraph (1) above, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Lights on tidal works during construction

17.—(1) The Council shall at or near a tidal work during the whole time of the construction, alteration, enlargement, replacement, relaying or extension thereof 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) If the Council fail to comply in any respect with a direction given under paragraph (1) above, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Power to lease

18. The Council may 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 authorised works for harbour purposes for such period and on such terms and conditions as shall be agreed between the Council and the person taking the same.

Parking places

19. The Council may provide facilities within the authorised works undertaking for the parking of vehicles (including trailers) and for that purpose may erect barricades or fencing with relative offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

Removal of vehicles etc.

20.—(1) If a vehicle is left without the permission of the Council—

(a) in any place where it is likely to obstruct or interfere with the use of the authorised works;

- (b) in any part of the authorised works where the parking of vehicles is prohibited by notice erected by the Council;

the Council may remove the vehicle or cause it to be removed.

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

(3) Where the Council in exercise of the powers of this article remove a vehicle or cause it to be removed, the expense of and incidental to the removal shall be recoverable by the Council from any person responsible as a debt in any court of competent jurisdiction.

(4) For the purposes of paragraph (3) above “person responsible” shall have the same meaning as in section 102(8) of the Road Traffic Regulation Act 1984⁽¹⁰⁾.

(5) If the Council in exercise of the powers of this article remove a mechanically propelled vehicle to a place not readily visible from the place whence it is so removed they shall, if and so soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 1971⁽¹¹⁾ or any other regulations having the like effect for the time being in force, at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle has been removed.

(6) The Council shall cause to be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the Mile End Quay undertaking a notice giving the name of a person to whom or a place or other point of contact to which a person having an interest in a vehicle may refer in the event that the Council, acting under paragraph (1) above or other powers conferred by law, remove the vehicle or cause it to be removed from a place where it was left without the permission of the Council.

(7) In this article “vehicle” includes trailer.

Further extension of section 86 of Portsmouth Corporation Act 1959

21. Section 86 (Powers with respect to disposal of wrecks) of the Portsmouth Corporation Act 1959⁽¹²⁾, as having effect in accordance with—

- (a) article 21 of the Portsmouth Mile End Quay Revision Order 1966⁽¹³⁾;
- (b) article 21 of the Portsmouth Mile End Quay Revision Order 1973⁽¹⁴⁾;
- (c) article 15 of the Portsmouth Mile End Quay Harbour Revision Order 1988⁽¹⁵⁾; and
- (d) article 24 of the Portsmouth Mile End Quay Harbour Revision Order 1991⁽¹⁶⁾; 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 references to any approach to the authorised works.

Crown rights

22. Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Council to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners

⁽¹⁰⁾ 1984 c. 27.

⁽¹¹⁾ S.I. 1971/450.

⁽¹²⁾ 1959 c.xlv.

⁽¹³⁾ S.I. 1966/982.

⁽¹⁴⁾ S.I. 1973/2135.

⁽¹⁵⁾ S.I. 1988/1519.

⁽¹⁶⁾ S.I. 1991/993.

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without the consent in writing of those Commissioners on behalf of Her Majesty first had and obtained for that purpose.

Saving rights of Queen's Harbour Master

23. 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.

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 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 Secretary of State for Transport

3rd November 1993

M. W. Jackson
An Under Secretary in the
Department of Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers Portsmouth City Council as the harbour authority for the Mile End Quay to construct a quay and to reclaim land to the south and west of the existing Portsmouth Continental Ferry Port Berth Number 2.

The Order confers on the Council duties and powers with reference to the authorised works, including power to lease the works once completed.