S T A T U T O R Y I N S T R U M E N T S

2016 No. 415

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Hayle Harbour (Penpol Creek Footbridge) Order 2016

Made - - - - *17th March 2016*

Coming into force - - *7th April 2016*

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SCHEDULE — SCHEDULED WORK

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**a**) for an Order under sections 3 and 5 of the Transport and Works Act 1992(**b**) ("the 1992 Act").

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application.

The Secretary of State is of the opinion that the primary object of this Order cannot be achieved by means of an order under the Harbours Act 1964(**c**).

Notice of the Secretary of State's determination was published in the London Gazette on 4th March 2016.

The Secretary of State, in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 1, 2, 4, 7 and 8 of Schedule 1 to, the 1992 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hayle Harbour (Penpol Creek Footbridge) Order 2016 and comes into force on 7th April 2016.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**d**);

"address" includes any number or address used for the purposes of electronic transmission;

"the authorised works" means the scheduled work and any other works authorised by this Order;

"the Authority" means the statutory harbour authority of Hayle Harbour in Cornwall as authorised under the Hayle Harbour Act 1989(**e**);

"building" includes any structure or erection or any part of a building, structure or erection;

"the deposited plans" means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

"the deposited sections" means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

(**a**) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
(**b**) 1992 c. 42. Section 3 was amended by paragraphs 51 and 53 of Schedule 2 to the Planning Act 2008 (c. 29); section 5 was amended by S.I. 2012/1659.
(**c**) 1964 c. 40.
(**d**) 1961 c. 33.
(**e**) 1989 c. xii.

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the limits of deviation" means the limits of deviation for the scheduled work shown on the deposited plans;

"reference point" means Ordnance Survey National Grid reference point;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace and "maintenance" is to be construed accordingly;

"mooring" means any buoy, pile, post, chain, pillar, pontoon, fixed rail or similar apparatus or convenience provided or used for the mooring of vessels;

"scheduled work" means the work specified in the Schedule or any part of it;

"Secretary of State" means the Secretary of State for Transport;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"tidal work" means so much of any work authorised by this Order as is in, under or over tidal waters or tidal lands below the level of high water; and

"vessel" means every description of vessel with or without means of propulsion of any kind and includes—

(c) anything constructed or used to carry persons, goods, plant or machinery, or to be propelled or moved, on or by water;

(d) a seaplane on or in the water; and

(e) a hovercraft within the meaning of the Hovercraft Act 1968(**a**).

(2) All distances, directions, lengths and reference points stated in the description of the scheduled work or in any descriptions of powers or lands are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

PART 2

WORKS PROVISIONS

Principal powers

Powers to construct and maintain works

3.—(1) The Authority may construct and maintain the scheduled work.

(2) Subject to article 4 (power to deviate), the scheduled work may only be constructed in the lines and situations shown on the deposited plans within the limits of deviation and in accordance with the levels shown on the deposited sections.

(3) The Authority may within the limits of deviation for the scheduled work, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction, operation or maintenance of the scheduled work, namely—

(a) temporary moorings or other means of accommodating vessels during the construction or maintenance of the scheduled work;

(b) buoys, beacons, fenders and other navigational warning or ship impact protection works;

(c) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work; and

(d) such other works of whatever nature as may be necessary or expedient.

(**a**) 1968 c. 59.

Power to deviate

4. In constructing or maintaining any of the scheduled work, the Authority may deviate laterally from the lines or situations shown on the deposited plans to any extent within the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding 3 metres upwards or downwards.

PART 3

PROVISIONS RELATING TO TIDAL WORKS

Lights on tidal works during construction

5.—(1) The Authority must, at or near a tidal work during the whole time of the construction, alteration or replacement of that work, exhibit every night from sunset to sunrise, such lights, if any, and take such other steps for the prevention of danger to navigation, as the Secretary of State may from time to time direct.

(2) If the Authority fails to comply with any requirement of a direction reasonably given under paragraph (1), it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provision against danger to navigation

6.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of that work the Authority must as soon as reasonably practicable notify Trinity House and lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Authority fails to notify Trinity House as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Abatement of works abandoned or decayed

7.—(1) Where a tidal work is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Authority at its own expense either to repair and restore the work or any part of that work, or to remove the work and restore the site of that work to its former condition, to such an extent and within such limits as the Secretary of State thinks fit.

(2) Where—

(a) 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

(b) that part of the work on or over land above the level of high water is in such a 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 paragraph (1).

(3) If, at the end of a period of 30 days from the date on which a notice under this article is served, the Authority has failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by the Secretary of State in so doing is recoverable from the Authority.

Survey of tidal works

8. The Secretary of State may at any time, if the Secretary of State deems it expedient, order a survey and examination of a tidal work or of the site upon which it is proposed to construct the

tidal work, and any expenditure reasonably incurred by the Secretary of State in relation to any such survey and examination is recoverable from the Authority.

Permanent lights on tidal works

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

(2) If the Authority fails to comply in any respect with a direction reasonably given under this article, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Defence of due diligence

10.—(1) In proceedings for an offence under article 5 (lights on tidal works during construction), article 6 (provisions against danger to navigation) or article 9 (permanent lights on tidal works) it is a defence for the Authority to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Authority is not, without leave of the court, to be entitled to rely on that defence unless, at least 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

PART 4

MISCELLANEOUS AND GENERAL

Obstruction of construction of works

11. Any person who, without reasonable excuse—

(a) obstructs any person acting under the authority of the Authority in setting out the lines of the scheduled work or in constructing any work authorised by this Order; or

(b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the Authority,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Certification of plans etc.

12. The Authority must, as soon as practicable after the making of this Order, submit copies of the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the sections and plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

13.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post; or

(b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(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) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, 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, his last known address at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Saving for Trinity House

14. Nothing in this Order affects or derogates from any of the rights, duties or privileges of Trinity House.

Signed by the authority of the Secretary of State for Transport

Martin Woods
Head of the Transport and Works Act Orders Unit
Department for Transport

17th March 2016

(**a**) 1978 c. 30.

SCHEDULE

Articles 2 and 3

SCHEDULED WORK

In the Parish of Hayle, County of Cornwall, a fixed bridge, for use by pedestrians and cyclists only, across the Penpol Creek in Hayle Harbour supported on columns commencing on the eastern side of Penpol Creek at reference point X – 155807153.7602 and Y – 37435909.1405 and extending in a westerly direction for a distance of 60 metres and terminating on the west side of Penpol Creek at reference point X – 155751113.2654 and Y – 37414668.1583.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the statutory harbour authority of Hayle Harbour to construct a fixed pedestrian footbridge over the Penpol Creek from the South Quay of Hayle Harbour to Penpol Terrace. The new footbridge would provide a link between Hayle Harbour and the town of Hayle for pedestrians and cyclists.

A copy of the deposited plans and the deposited sections referred to in this Order may be inspected at the offices of the Harbour Authority at Old Customs House, North Quay, Hayle, Cornwall, TR27 4BL.

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ISBN 978-0-11-114572-2

£6.00

UK2016031711 03/2016 19585

http://www.legislation.gov.uk/id/uksi/2016/415

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