STATUTORY INSTRUMENTS

2019 No. 798

HARBOURS, DOCKS, PIERS AND FERRIES

The Ilfracombe Harbour Revision Order 2019

Made - - - -	*5th April 2019*
Laid before Parliament	*9th April 2019*
Coming into force - -	*13th May 2019*

CONTENTS

PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
WORKS

3. Power to construct works
4. Power to deviate
5. Subsidiary works
6. Period for completion of works
7. Obstruction of works
8. Provision against danger to navigation
9. Abatement of works abandoned or decayed
10. Survey of authorised works
11. Lights on tidal works during construction, etc.
12. Defence of due diligence

PART 3
MISCELLANEOUS AND GENERAL

13. Crown rights
14. Saving for Trinity House

The North Devon District Council have applied for a harbour revision order under section 14 of the Harbours Act 1964(**a**) ("the Act").

The Secretary of State, as the appropriate Minister for the purposes of that section has delegated the functions of the appropriate Minister under section 14(**b**) to the Marine Management Organisation (**c**) by an order (**d**) under section 42A of the Act (**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) and (3), makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Ilfracombe Harbour Revision Order 2019 and shall come into force on [ ] 2019.

(2) The Ilfracombe Harbour Act and Orders 1870 to 1900(**f**), Part II of the Ilfracombe Harbour and Improvement Act 1905(**g**), the Ilfracombe Harbour Revision Order 1996(**h**) and this Order may be cited together as the Ilfracombe Harbour Act and Orders 1870 to 2019.

Interpretation

2.—(1) In this Order

"the authorised works" means the works authorised by this Order, or, as the case may require, any of, or any part of such works;

"the Council" means the North Devon District Council;

"the deposited plan" and "the deposited sections" mean respectively the plan and sections (numbered sheets HRO1 to HRO2) prepared in duplicate, signed on behalf of the Marine Management Organisation and marked "The Ilfracombe Harbour Revision Order 2019 plans and sections" of which one copy has been deposited at the offices of the Marine Management Organisation and the other at the principal office of the Council at Lynton House, Commercial Road, Barnstaple EX31 1DG;

"the harbour" means the harbour of Ilfracombe within the limits described in article 6 of the Ilfracombe Harbour Order 1900;

"the level of high water" means the level of high-water spring tides;

"the limits of deviation" means the limits of deviation shown on the deposited plan;

(**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 (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 Schedule 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**) For the definition of "the Minister", see section 57(1).

(**c**) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009, section 1.

(**d**) S.I. 2010/674

(**e**) Section 42A was inserted by the Marine and Coastal Access Act 2009, section 315 and Schedule 21, paragraphs 1 and 3(1).

(**f**) Confirmed by 1870 c. lxxxii, 1873 c. lxiii and 1900 c. lx. The Order confirmed by 1897 c. lxxxii was repealed by the Ilfracombe Harbour and Improvement Act 1905 (c. xxxix), section 9.

(**g**) 1905 c. xxxix

(**h**) S.I. 1996/2103

"the Maritime and Coastguard Agency" means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

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

"the UK Hydrographic Office" means the Hydrographic Office of the Ministry of Defence, Taunton, Somerset TA1 2DN.

(2) All heights, widths, depths and other measurements (other than the limits of deviation) shall be construed as if the words "or thereabouts" were inserted after each such height, width, depth or other measurement.

PART 2

WORKS

Power to construct works

3.—(1) Subject to the provisions of this Order, the Council or others acting on its behalf may, within the limits of deviation shown on the deposited plan and according to the levels shown on the deposited sections, construct and maintain the following works –

Work No. 1

A new harbour wall located up to 8 metres north from the existing harbour wall in Larkstone Cove, Ilfracombe. The new harbour wall and existing harbour wall are to be bridged with a concrete slab to create a new extended quayside. Work No. 1 will be constructed along the thick black line shown on the deposited plan and drawn as follows:

(a) a line between point D1 (north 51.209145, west -4.1110036) and point D2 (north 51.209122, west -4.1107735);

(b) a line between point D2 (north 51.209122, west -4.1107735) and point D3 (north 51.209089, west -4.1106431);

(c) a line between point D3 (north 51.209089, west -4.1106431) and point D4 (north 51.209072, west -4.1105851);

(d) a line between point D4 (north 51.209072, west -4.1105851) and point D5 (north 51.209073, west -4.1105136);

(e) a line between point D5 (north 51.209073, west -4.1105136) and point D9 (north 51.209066, west -4.1103987); and

(f) a line between point D9 (north 51.209066, west -4.1103987) and point D10 (north 51.209067, west -4.1103415).

Work No. 2

A slipway constructed of longitudinal concrete beams with a surface of concrete planks, supported laterally by cross beams and vertically by concrete columns on reinforced concrete footings commencing at a point on the new harbour wall located 4.5 metres west from the end of Larkstone Lane, Ilfracombe and extending into Larkstone Cove, Ilfracombe, for 36 metres with an overall width of 8.15 metres. Work No. 2 will be constructed on or within the area shown by thick black lines on the deposited plan and drawn as follows:

(a) a line between point D5 (north 51.209073, west -4.1105136) and point D6 (north 51.209302, west -4.1107674);

(b) a line between point D6 (north 51.209302, west -4.1107674) and point D7 (north 51.20934, west -4.1106689);

(c) a line between point D7 (north 51.20934, west -4.1106689) and point D8 (north 51.209111, west -4.1104151); and

(d) a line between point D8 (north 51.209111, west -4.1104151) and point D9 (north 51.209066, west -4.1103987).

Power to deviate

4. Subject to the provisions of this Order, in carrying out the authorised works, the Council may—

(a) deviate laterally from the lines or situations shown on the deposited plan to the extent of the limits of deviation; and

(b) deviate vertically from the levels shown on the deposited sections to any extent not exceeding 1.5 metres upwards or to any extent downwards.

Subsidiary works

5.—(1) Subject to the provision of this Order, the Council may from time to time, within the limits of deviation, erect, construct, lay down, place, remove, replace, work or use and maintain whether temporarily or permanently all such works, conveniences, appliances and apparatus and take such measures as they from time to time consider fit for the purposes of or in connection with or incidental to the construction, maintenance and use of the authorised works, including, without prejudice to the generality of the foregoing, navigation marks and lights.

(2) In the course of erecting, constructing, laying down, placing, removing and replacing the authorised works the Council may carry out construction activity, including the temporary placing of plant and equipment, within the waters adjoining the limits of deviation.

Period for completion of works

6.—(1) If all the works authorised by article 3 are not substantially commenced within 5 years from the coming into force of this Order or such extended time as the Secretary of State may, on the application of the Council allow, then on the expiry of that period, or such extended time (as the case may be), the powers conferred by article 3 for constructing and maintaining those works shall cease to have effect except as to so much of them as is then substantially commenced.

(2) Nothing in paragraph (1) shall affect the carrying out of the works under article 5.

Obstruction of works

7. Any person who without lawful authority—

(a) intentionally or recklessly obstructs any person acting under the authority of the Council in constructing, using or maintaining the works; or

(b) interferes with, moves or removes any plant or equipment used in the construction, use or maintenance of the works;

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

8.—(1) In case of injury to, or destruction or decay of, the authorised works the Council must—

(a) as soon as reasonably practicable notify Trinity House, the Maritime and Coastguard Agency and the UK Hydrographic Office; and

(b) 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 Council fail to comply with paragraph (1)(a) or (b), it is guilty of an offence and liable—

(a) on summary conviction, to a fine;

(b) on conviction on indictment, to a fine.

Abatement of works abandoned or decayed

9.—(1) Where the authorised works are abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Council at its own expense either to repair and restore the relevant part of the authorised works, or to remove the authorised works and restore their site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where works, consisting—

(a) partly of authorised works; and

(b) partly of works on or over land above the level of high water,

are abandoned or suffered to fall into decay and the works mentioned in sub-paragraph (b) are in such condition as to interfere or to cause reasonable apprehension that they may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include those works, or any portion thereof, in any notice under paragraph (1).

(3) If, on the expiration of 30 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 the Secretary of State in so doing shall be recoverable from the Council.

Survey of authorised works

10. The Secretary of State may at any time, if the Secretary of State deems it expedient to do so, order a survey and examination of the authorised works or of the site upon which it is proposed to construct the works and any expenditure incurred by the Secretary of State in so doing is recoverable from the Council.

Lights on tidal works during construction, etc.

11.—(1) The Council must at or near any authorised works during the whole time of the construction of any tidal works exhibit every night from sunset to sunrise such lights, shapes and signals 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 Council fail to comply in any respect with a direction given under paragraph (1), it is guilty of an offence and liable—

(a) on summary conviction to a fine;

(b) on conviction on indictment to a fine.

(3) In this article, "tidal works" means so much of the authorised works as are on, under or over tidal waters or tidal land below the level of high water.

Defence of due diligence

12.—(1) In proceedings for an offence under articles 8 or 11 it shall be a defence for the Council to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the 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 Council is not, without the leave of the court, entitled to rely on that defence unless, before the period of 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 3

MISCELLANEOUS AND GENERAL

Crown rights

13.—(1) Nothing in this Order—

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

(b) authorises the Council to take, use, enter upon or in any manner interfere with, any land, hereditaments or rights of whatever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—

(i) Her 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) 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)(b) may be given unconditionally or may be subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

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

Signed by Authority of the Marine Management Organisation

J.F.Tucket
Chief Executive Officer
An Authorised employee of the Marine Management Organisation

22nd January 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the North Devon District Council ("the Council") as the harbour authority for Ilfracombe Harbour to construct and maintain a new harbour wall and a slipway from the new watersports centre in The Strand, Ilfracombe extending into the bed and foreshore of Ilfracombe Harbour.

The Order creates an offence of intentionally or recklessly obstructing the carrying out of the works without lawful authority, with a fine on summary conviction not exceeding level 3 on the standard scale (article 7).

Provision is made against danger to navigation (article 8) and for the abatement of works abandoned or decayed (article 9).

The Secretary of State may order a survey and examination of the authorised works (defined in article 2(1)) or of the site on which they are to be constructed (article 10).

Provision is made for the lighting of the tidal works (defined in article 11(3)) during construction (article 11).

A defence of due diligence is available to the Council in respect of offences under articles 8 and 11 (article 12).

The deposited plan and sections referred to in this order may be inspected during working hours at the principal office of the Council at Lynton House, Commercial Road, Barnstaple EX31 1DG.

A full regulatory impact assessment has not been provided for this instrument as there is no impact on business or charities or the voluntary sector.

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