STATUTORY INSTRUMENTS

2014 No. 17

HARBOURS, DOCKS, PIERS AND FERRIES

The Lymington Harbour (Works) Revision Order 2014

Made - - - -	*8th January 2014*
Laid before Parliament	*14th January 2014*
Coming into force - -	*5th February 2014*

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The Lymington Harbour Commissioners have applied 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 that section, 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 Lymington Harbour (Works) Revision Order 2014 and shall come into force on 5th February 2014.

(2) The Lymington River and Harbour Order 1951, the Lymington Harbour Revision Order 1976, the Lymington Harbour Revision (Constitution) Order 2002 and this Order may be cited together as the Lymington Harbour Orders 1951 to 2014.

Interpretation

2.—(1) In this Order—

"authorised works" means the works authorised by this Order, or any part of such works;

"the Commissioners" means the Lymington Harbour Commissioners;

"the deposited plans" and "the deposited sections" mean respectively the plans and sections numbered sheets HRO1 to HRO4 prepared in duplicate, each signed on behalf of the Marine Management Organisation and marked "Plan and sections referred to in the Lymington Harbour (Works) Revision Order 2014" of which one copy has been deposited at the offices of the Marine Management Organisation and the other at the principal office of the Commissioners at the Harbour Office, Bath Road, Lymington SO41 3SE;

"the harbour" means Lymington Harbour;

"harbour premises" means the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied or administered by, the Commissioners as part of the harbour;

"harbour undertaking" means the undertaking of the Commissioners authorised by the Lymington Harbour Orders 1951 to 2014;

"level of high water" means the level of mean high-water springs;

"limits of deviation" means the limits of deviation shown on the deposited plans; and

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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 I), 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 Schedules 6 and 12 (Part II) and by the Marine and Coasral 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.

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

(2) In this Order a reference to—

(a) a work identified by a number shall be construed as a reference to the work of that number authorised by article 3(1); and

(b) a phase identified by a number shall be construed as a reference to the phase of that number specified in the description of the works in article 3(1).

(3) References in the Lymington Harbour Revision Orders 1951 to 2014 to the harbour undertaking of the Commissioners and to the harbour premises shall in each case be construed for all purposes as including references to any works maintained or constructed and maintained and any lands reclaimed by the Commissioners under or by virtue of this Order.

PART 2

WORKS

Power to maintain and construct and maintain works

3.—(1) Subject to the provisions of this Order, the Commissioners may (within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections) maintain the whole or any part of Phase 1, and may construct and maintain the whole or part of Phases 2 to 6, of the following works on and in the bed and foreshore of the harbour, together with all necessary works and conveniences connected with or incidental to them—

Work No. 1

A rock mound breakwater on the western side of the channel, disposed about a centre line commencing at North 50° 45.045', West 1°31.177 and extending in a west south westerly direction to North 50° 44.989', West 1°31.216 (Phase 1) and then in a gentle curve to North 50° 44.946', West 1°31.332 (Phase 3), and thence in a generally westerly direction to North 50° 44.933', West 1°31.468 (Phase 4). The overall width of the breakwater varies between approximately 16 metres and 30 metres depending on the actual level of the foreshore at the time of the construction.

Work No. 2

A rock mound breakwater on the eastern side of the channel, disposed about a centre line commencing at North 50° 44.961', West 1°31.048 and extending in a north easterly direction to North 50° 45.036', West 1°30.934 (Phase 2) and then in a gentle curve to North 50° 45.108', West 1°30.875 (Phase 5), and thence in a generally northerly direction to North 50° 45.202', West 1°30.844 (Phase 6). The overall width of the breakwater varies between approximately 16 metres and 30 metres depending on the actual level of the foreshore at the time of the construction.

(2) The Commissioners may maintain Phase 1 and construct and maintain Phases 2 to 6 of the authorised works in such stages and along such lines within the areas described and within the limits of deviation as the Commissioners may from time to time deem appropriate.

(3) The Commissioners may from time to time within the limits of deviation alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised works and may maintain the same as altered, enlarged, replaced, relayed, extended or reconstructed.

(4) The authorised works and the bed, banks and shores of the harbour on which the authorised works are maintained or constructed and maintained and any lands reclaimed shall for all purposes form part of the harbour undertaking of the Commissioners and of the harbour premises and all enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Commissioners or its officers, and all byelaws for the time being in force in relation to the harbour undertaking or the harbour premises, shall so far as relevant, apply to the authorised works and such bed, banks, shores and lands and may be enforced by the Commissioners accordingly.

(5) In paragraph (1) the map reference points shall be construed—

(a) as references to coordinates of the World Geodetic System, revised in 1984 and further revised in 2004; and

(b) as if the words "or thereabouts" were inserted after each point.

Power to deviate

4. Subject to the provisions of this Order, in constructing the authorised works the Commissioners may deviate laterally from the lines or situations shown on the deposited plans 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 or to any extent downwards as may be found necessary or convenient.

Subsidiary works

5.—(1) Subject to the provisions of this Order, the Commissioners 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 Commissioners may carry out construction activity, including the temporary placing of plant and equipment, within the water adjoining the limits of deviation.

Period for completion of works

6. If the construction of the works authorised by article 3 is not completed within 50 years of the coming into force of this Order or such extended time as the Secretary of State may, on the application of the Commissioners, allow, then, on the expiration of that period, or such extended time (as the case may be), the powers conferred by this Order on the Commissioners for maintaining or constructing and maintaining those works shall cease to have effect except as to such of those works as are then completed or substantially commenced.

Works to be within the district of New Forest

7.—(1) On the accretion date, the area of the whole or so much of the works authorised to be maintained or constructed and maintained by article 3 or 5 as have been completed or substantially completed shall, to the extent that they are outside the area of New Forest District Council, be annexed to and incorporated within—

(a) the district of New Forest;

(b) the petty sessional division of Lyndhurst; and

(c) the Lymington Town Ward (in respect of Work No.1 and works authorised by article 5 relating thereto) and the Boldre and Sway Ward (in respect of Work No. 2 and works authorised by article 5 relating thereto); and

works completed under the powers conferred by article 3 or 5 after that date shall, to the extent that they are outside that area, be so incorporated when they are completed.

(2) In this article, "accretion date" means whichever of the following dates first occurs, namely, the date when the construction of the works so authorised is completed or the date when in accordance with article 6 the powers conferred by article 3 cease to have effect except as to such of the works authorised by that article as are then completed or substantially commenced.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(**a**) until the Commissioners have certified in writing to the Director General of Ordnance Survey that the construction of the works authorised by article 3 is completed.

Obstruction of works

8. Any person who, without lawful authority, intentionally or recklessly obstructs any person acting under the authority of the Commissioners in setting out the lines of the authorised 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 4 on the standard scale.

Provision against danger to navigation

9.—(1) In case of injury to, or destruction or decay of, the authorised works or any part of them the Commissioners must as soon as reasonably practicable notify Trinity House, the Maritime and Coastguard Agency and the United Kingdom Hydrographic Office and must 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 Commissioners fail to notify Trinity House, the Maritime and Coastguard Agency and the United Kingdom Hydrographic Office as required by this article or to comply in any respect with a direction given under this article, they shall be guilty of an offence and 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

10.—(1) Where authorised works are abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their 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 Commissioners, 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 Commissioners.

Survey of authorised works

11. The Secretary of State may at any time, if he 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 maintain or construct and maintain the works and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Commissioners.

(**a**) 1841 c.30.

Permanent lights on authorised works

12.—(1) After the completion of the authorised works the Commissioners must at the outer extremity of such works exhibit, every night from sunset to sunrise, such lights and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under this article, they shall be guilty of an offence and 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, etc.

13.—(1) The Commissioners must at or near any authorised works during the whole time of the construction of any tidal works required in connection with the construction of the authorised works exhibit, every night from sunset to sunrise, such lights 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 Commissioners fail to comply in any respect with a direction given under this article, they shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction or indictment to a fine.

(3) In paragraph (1) "tidal works" means so much of the authorised works as are on, under or over tidal waters or tidal lands below the level of high water.

Defence of due diligence

14.—(1) In proceedings for an offence under article 9, 12 or 13 it shall be a defence for the Commissioners to prove that they 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 Commissioners shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, they have 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 their possession.

PART 3

MISCELLANEOUS AND GENERAL

Crown rights

15.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the foregoing, nothing in this Order authorises the Commissioners 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 other 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.

Saving for Trinity House

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

For the protection of the Environment Agency

17. Nothing in this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(**a**) or any byelaw made under that Act or the Land Drainage Act 1991(**b**) in relation to anything done under or in pursuance of this Order.

Signed by authority of the Marine Management Organisation

J Cross
Chief Executive Officer
8th January 2014 an authorised employee of the Marine Management Organisation

(**a**) 1991 c.57, section 109 was amended by the Environment Act 1995 (c.25), section 120(1), Schedule 22, paragraph 128.
(**b**) 1991 c.59.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Lymington Harbour Commissioners ("the Commissioners") as the harbour authority for Lymington Harbour to construct and maintain two overlapping breakwaters, one to the east and the other to the west of the main navigation channel (article 3) within the limits of deviation on the deposited plans and sections (defined in article 2(1)) (article 4) and confers further powers as to subsidiary works relating to those works (article 5).

The works are to be within the New Forest district, when they are completed or substantially completed (article 7).

The Order creates an offence of, without lawfully authority, intentionally or recklessly obstructing the carrying out of the works, with a fine on summary conviction not exceeding level 4 on the standard scale (article 8).

Articles 9 and 10 make provision against danger to navigation and for the abatement of works abandoned or decayed.

The Secretary of State is empowered to order a survey and examination of the authorised works (defined in article 2(1)) or the site on which they are to be constructed and maintained (article 11).

Provision is made for the lighting of the authorised works permanently and tidal works during construction (articles 12 and 13).

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

The deposited plans and sections may be inspected during working hours at the principal office of the Commissioners at the Harbour Office, Bath Road, Lymington SO41 3SE.

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