

**[DRAFT 24.6.2015]**

**2015 No.**

**HARBOURS, DOCKS, PIERS AND FERRIES WALES**

**The Milford Haven (Martello Quays) Harbour Revision Order 2015**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

Martello Quays Limited have applied in accordance with section 14(2)<sup>(1)</sup> 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<sup>(2)</sup> under section 42A<sup>(3)</sup> delegated the functions of the appropriate Minister under section 14<sup>(4)</sup> to the Marine Management Organisation<sup>(5)</sup>.

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.** This Order may be cited as the Milford Haven (Martello Quays) Harbour Revision Order 2015 and shall come into force on [TBC] 2015.

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<sup>(1)</sup> 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 Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2). S.I.2010/674.

<sup>(2)</sup>

<sup>(3)</sup> 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).

<sup>(4)</sup> For the definition of "the Minister" (mentioned in section 14(7)) see section 57(1).

<sup>(5)</sup> The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

## **Interpretation**

2.—(1) In this Order—

“the 1983 Act” means the Milford Haven Conservancy Act 1983<sup>(6)</sup>;

“authorised works” means the works authorised by the Marine Licence, and shown hatched in red on the attached plan;

“the Authority” means the Milford Haven Port Authority;

“the Boat Harbour” means the area comprising the authorised works and the enclosed area, and shown hatched in blue on the attached plan;

“the Company” means Martello Quays Limited and any successor in title in respect of any part of the land comprised within the Boat Harbour;

“the Completion Date” means the date on which the Company notifies the Authority in writing that the authorised works have been constructed in accordance with the Marine Licence;

“the enclosed area” means the area to be enclosed by the authorised works up to the level of mean high water springs, and shown hatched in blue but not hatched in red on the attached plan;

“the Haven” has the meaning assigned to it by section 3 of the 1983 Act;

“the Harbourmaster” has the meaning assigned to it by section 2 of the Act of 1983;

“Harbour Undertaking” means the undertaking of the Authority authorised by the Milford Haven Port Authority Acts and Orders 1983 to 2012;

“level of high water” means the level of mean high-water springs;

“the Marine Licence” means the marine licence granted by the Welsh Assembly Government under Section 71 of the Marine and Coastal Access Act 2009 on DD/MM/YYYY with reference number [@@@] in respect of works comprising the construction of a marina outer containment wall and lock at Pembroke Dock in the Haven;

“tidal work” means so much of any of the works comprising the authorised works or any works described in article 5 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;

## 2

### POWERS INCIDENTAL TO THE AUTHORISED WORKS

#### **Power to interfere with and extinguishment of rights of navigation**

3. – (1) After the date on which this Order comes into force the Company and any person authorised by the Company may within the Haven interfere with the enjoyment of any right of navigation to the extent only that such interference is necessary for the purposes of constructing, using and maintaining the authorised works.

(2) On completion of the construction of the authorised works, any right of navigation or other public rights over the Boat Harbour shall be extinguished.

#### **Removal and Disposal of unlicensed vessels, moorings, etc.**

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<sup>(6)</sup> c.xix.

4. - (1) After the date on which this Order comes into force, the Company may remove any vessel, mooring or other thing within the Haven which is causing or likely to become an obstruction or impediment to the proper construction of the authorised works.

(2) After the completion of the construction of the authorised works, the Company may remove any vessel, mooring or other thing within the Boat Harbour which is causing or likely to become an obstruction or impediment to the proper use of the Boat Harbour.

(3) Where the Company removes anything in accordance with paragraph (1) or (2), and the thing is not marked or readily identifiable as the property of any person, the Company shall upon removal place the thing in a secure area and shall cause a notice to be placed in a newspaper circulating in the locality, listing every such vessel, mooring or thing which has been so removed and inviting its owners to retake it from that secure area.

(4) If anything so removed is known to the Company to be, or is marked so as to be readily identifiable as, the property of any person, the Company must, within 28 days of its coming into their custody, give notice in accordance with paragraph (5) to that person.

(5) A notice given under paragraphs (3) or (4) must specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Company possession may be taken at a place and time specified in the notice, being not less than 28 days after the date when the notice is served.

(5) If the thing is not collected by the owner within three months of the publication of notice under paragraph (3) or (4), it will vest in the Company.

(6) The Company may, at such time and in such manner as they think fit, dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Company under this article, and if it is sold the proceeds of sale will be applied by the Company in payment of the expenses incurred by them under this article in relation to the thing, and any balance—

(a) must be paid to any person who within three months from the time when the thing came into the custody of the Company proves to the reasonable satisfaction of the Company ownership of that thing at that time; or

(b) if within the relevant period no person proves ownership, it will vest in the Company.

(7) If anything removed under this article is sold by the Company and within a period of 3 years from the date of service or publication of notice under Paragraph (2) or (3) in respect of that vessel, mooring or thing the owner thereof proves his ownership to the satisfaction of the Company, the Company shall account to him for any proceeds of sale, less the expenses incurred by the Company in the exercise of their powers of removal and sale thereof.

(8) The Company must not under the powers of this article remove any vessel, mooring or thing placed or constructed by any person under the provisions of any consent or licence given or issued by the Authority.

## **Installation and operation of directional and holding buoys**

5. - (1) The Company may request the Authority to provide, place, lay down, maintain, renew, or remove within the Haven in proximity to the authorised works —

- (a) buoys and other markers for the guidance of vessels seeking to enter or leave the Boat Harbour; and
- (b) holding buoys, jetties and pontoons for use by vessels waiting to enter the Boat Harbour;

as the Company consider necessary or desirable for the convenience of vessels.

(2) The Authority and the Company may require any person using a holding buoy, jetty or pontoon for any purpose other than waiting to take a vessel into the Boat Harbour at the next available opportunity to remove the vessel immediately.

## **PART 3**

### **PROVISIONS FOR THE PROTECTION OF THE HAVEN**

#### **Survey of authorised works**

6.- (1) The Welsh Ministers may at any time if they deem 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 recoverable from the Company as a debt.

#### **Provision against danger to navigation**

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

(2) Subject to article 12 (defence of due diligence), if the Company fails to notify Trinity House or the Authority as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it 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.

(3) The Company shall not operate the authorised works so as to enable any vessel to enter or leave any part of the authorised works in respect of which there is in force any direction given under paragraph (1).

#### **Abatement of works abandoned or decayed**

8.—(1) Where a tidal work is abandoned or has fallen into decay the Welsh Assembly Government may by notice in writing require the Company at its own expense to either repair and restore the work or any part of it, or remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Welsh Ministers 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 has fallen 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 Welsh Ministers may include that part of the work or any portion of it, 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 Company, it has failed to comply with the requirements of the notice, the Welsh Ministers may execute the works specified in the notice and any expenditure incurred by them in so doing shall be recoverable from the Company as a debt.

### **Lights on tidal works during construction**

**9.**—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company must at the outer extremity of that work 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 or the Authority may from time to time direct.

(2) Subject to article 12, if the Company fails to comply in any respect with a direction given under paragraph (1) it 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.

### **Permanent lights on authorised works**

**10.**—(1) After completion of a tidal work the Company must at the outer extremity of the work 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 [or the Authority] may from time to time direct.

(2) Subject to article 12, if the Company fails to comply in any respect with a direction given under paragraph (1) it 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.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **Alteration of limits of Haven**

**11.**—(1) 28 days after the Completion Date, so much of the Haven as lies within the Boat Harbour shall cease to form part of the Haven.

(2) Subject to paragraph (3), on and after the completion date, the area which was formerly part of the Haven as described in paragraph (1) shall cease to form part of the Authority's harbour undertaking and, in respect of that area—

- (a) the Authority shall cease to exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(7)</sup>, and
- (b) the powers of the harbour master shall cease to be exercisable.

(3) On or after the completion date, the Company must publish a notice explaining the effect of this article in the London Gazette and in at least one local newspaper circulating in the area in which the authorised works are situated.

#### **Defence of due diligence**

**12.**—(1) In proceedings for an offence under any of the provisions mentioned in paragraph (2) it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 7 (provision against danger to navigation);
- (b) article 9 (lights on tidal works during construction); and
- (c) article 10 (permanent lights on tidal works).

(3) If in any case the reliance on 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 Company shall not, without leave of the court, be entitled to rely on that defence unless, before the period of 7 clear days preceding 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.

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<sup>(7)</sup> 1964 c. 40.

### **Saving for Trinity House**

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

### **Crown rights**

14.—(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 that generality, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with, any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any haven, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or
- (c) 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 terms and conditions and shall be deemed to have been given in writing where it is sent electronically.

### **Protection for Milford Haven Port Authority**

15. The Schedule shall have effect.

Signed by authority of the Marine Management Organisation

*J. Cross*  
Chief Executive Officer

[Date] an authorised employee of the Marine Management Organisation

## SCHEDULE

Article 6

### Protection for Milford Haven Port Authority

1. In this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the haven or any jetty or other structure of whatever nature owned or occupied by the Authority; and

“plans” includes sections, descriptions, drawings and specifications.

2. The Company shall give to the Authority not less than 14 days’ written notice of its intention to commence the construction of a tidal work not more than 14 days after completion of such construction, shall give to the Authority written notice of such completion.

3. The Company shall at all reasonable times during construction of the works and after then allow the Authority, its servants and agents, access to the works and all reasonable facilities for inspection of any tidal work.

4. After the purpose of any temporary works has been accomplished the Company shall with all reasonable dispatch, or after a reasonable period of notice in writing from the Authority requiring the Company so to do, remove any such temporary works or any materials relating to them which may have been placed below the level of high water by or on behalf of the Company; and, on failing to so do within a reasonable period after receiving such notice, the Authority may remove them and may recover the reasonable costs of doing so from the Company.

5.—(1) If, during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction, there is caused or created an accumulation or erosion which prejudices or, if it continued, would be likely to prejudice the effective operation of or safety of navigation in the Haven, the Company, if so requested by the Authority acting reasonably before or within the period of 19 years after such completion or exercise, shall remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3) and, if the Company refuses or fails to do so within a reasonable period, the Authority may itself cause the work to be done and may recover the reasonable cost of doing so from the Company.

(2) If any accumulation or erosion in consequence of such construction arises within the said period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion which prejudices or, if it continued, would be likely to prejudice the effective operation of the Haven, shall from time to time be so remedied by the Company during the said period of 10 years and at any time thereafter, save that the Company's obligation under this paragraph shall cease if following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused in consequence of such construction or exercise.

(3) For the purposes of sub-paragraphs (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that surveys, inspection, tests and sampling carried out pursuant to paragraph 7(1)(b) of this Schedule establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a tidal work, the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) the date of completion of a work shall be the date on which it is brought into use.

6. The Company shall—

- (a) pay to the Authority the reasonable costs of such alterations to the marking and lighting of the navigational channel of the haven as may be necessary during or in consequence of the construction of a tidal work;
- (b) provide and maintain on any tidal work such fog-signalling apparatus as may be reasonably required by the Authority and properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of those works; and
- (c) afford to the Authority such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

7.—(1) Without prejudice to the other provisions of this Schedule, the Company shall be responsible for, and make good to the Authority, all losses, costs, charges, damages and expenses however caused (including a reasonable and proper proportion of the overhead charges of the Authority) which may reasonably be incurred by or occasioned to the Authority by reason of or arising from or in connection with—

- (a) the perusal of plans and the inspection of any of the tidal works by the Authority or its duly authorised representative;
- (b) the carrying out of surveys, inspections, tests and sampling within and of the haven (including its bed and banks)—
  - (i) to establish the marine conditions prevailing prior to the construction of any of the tidal works in such area of the haven as the Authority has reasonable cause to believe may subsequently be affected by any accumulation or erosion which the Company is liable to remedy under paragraph 6; and

- (ii) where the Authority has reasonable cause to believe that the construction of any of the tidal works is causing or has caused any accumulation or erosion as aforesaid;
- (c) the construction of any of the tidal works, the failure of any of the tidal works or the undertaking by the Authority of works or measures to prevent or remedy danger or impediment to navigation or damage to any property of the Authority arising from such construction, exercise or failure;
- (d) any act or omission of the Company or their servants or agents whilst engaged in the construction of any of the tidal works.

(2) Without prejudice to the generality of sub-paragraph (1), the Company shall indemnify the Authority from and against all claims and demands arising out of, or in connection with, such construction, exercise, failure or act or omission as is mentioned in that sub-paragraph.

(3) Nothing in this paragraph shall impose any liability on the Company to the extent that any losses, costs, charges, damages, expenses, claims or demands referred to in sub-paragraphs (1) or (2) is attributable to negligence on the part of the Authority or of any person in its employ or of its contractors or agents.

(4) The Authority shall give to the Company notice in writing of any claim or demand for which the Company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the Company.

**8.** The fact that any work or thing has been executed or done with the consent of the Authority and in accordance with any conditions or restrictions prescribed by the Authority or in accordance with plans approved or deemed to be approved by the Authority or to its satisfaction or in accordance with any directions or award of any arbitrator or in accordance with any plans approved by the [Welsh Ministers][Secretary of State] and any conditions or restrictions imposed by him, shall not relieve the Company from any liability under the provisions of this Schedule.

**9.** With the exception of any duty owed by the Authority to the Company expressly provided for in the foregoing provisions of this Schedule, nothing in this Order shall be construed as imposing upon the Authority, either directly or indirectly, any form of duty or liability to which the Authority would not otherwise be subject which is enforceable by proceedings before any court.

**10.** Nothing in this Order shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, the Authority or the harbourmaster at the commencement of this Order or any title of the Authority in, to or over any lands or foreshore held or acquired by it.

**11.** Any difference arising between the Company and the Authority under this Schedule shall be determined by arbitration.

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order allows for the interference with public rights of navigation in part of Milford Haven and for the removal of part of the Haven from the jurisdiction of Milford Haven Port Authority for the purpose of the construction, use and maintenance of a boat harbour to be constructed in that part of the Haven.

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.

