

PORT OF LONDON AUTHORITY

EXPLANATION OF AMENDMENTS TO PORT OF LONDON ACT 1968 AND OTHER LOCAL LEGISLATION PROPOSED IN THE DRAFT HARBOUR REVISION ORDER

The Order will state that the amendments to the Act only apply in relation to the functions of the Port Authority and not in relation to the application of the Act to Port of Tilbury London Limited. This follows the approach in the Tilbury Transfer scheme which provides for the Act to apply in different ways to the Port Authority and to that company.

Part I

Preliminary

Section 2 Interpretation

Definitions in the 1968 Act:

“autonomous vessels”

A new definition has been added because of the addition of new section 138B.

“bed”

The word “mean” has been deleted to reflect the updated definition of high water level.

“commercial and club boats”

This definition has been added to help clarify the definition of vessel and the definitions of master and owner in relation to boats used for a variety of commercial or club purposes.

“charges”

The definition has been expanded to make it clear that fees payable for a works, dredging or mooring licence are included in the term “charge”.

“craft”

This definition has been repealed because all references to it in the Act have also been repealed.

“the Custom House”

This definition has been repealed. Dues are mostly now paid to Revenue and Customs online and so this definition is no longer appropriate.

“customs officer”

This definition has been repealed because references to a customs officer have been replaced

by references to the Revenue and Customs, in line with the Commissioners for Revenue and Customs Act 2005.

“docks”

This definition has been amended to reflect the fact that the Port Authority no longer owns or administers these areas and the definition now refers instead to any docks within the limits. By virtue of the definition of the limits in Schedule 1, they will be within the limits if they are still accessible by vessels from the river. There are some docks which are now permanently cut off from the river and they will not fall within this definition, as they are no longer defined as falling within the limits.

“drainage authority”

This definition has been amended to reflect that of ‘drainage body’ in the Land Drainage Act 1991.

“dredge”

This new definition has been added. It was based on the existing definition in section 73. It has been expanded to cover different types of dredging and material in suspension. The latter wording follows the definition of “dredging” in section 66(2)(a) of the Marine and Coastal Access Act 2009.

“dredging permission”

This new definition is added as a consequence of amendments to section 73.

“dumb barge”

This new definition has been added to replace previous references to “lighter”. Lighter is an historic term used in relation to the licensing of watermen and lightermen. This regime no longer applies following the introduction of the national Boatmasters’ Licence qualification, administered by the Maritime and Coastguard Agency, which supersedes the requirement to have a locally recognised qualification.

“duties of HM Revenue and Customs”

This definition has been repealed because it is no longer used in the Act.

“electronic communications line”

This definition has been added to reflect the definition in paragraph 5 of the electronic communications code set out in Schedule 3A to the Communications Act 2003. References to electronic communications lines have been added in sections 61, 66 and 73 alongside references to other equipment of statutory undertakers, such as pipes or sewers, with the aim to bring the Act up to date in terms of modern technologies.

“electronic communications network”

This definition has been added to reflect the definition in s.32 of the Communications Act 2003. The term is used in section 73 to modernise the previous reference to the Postmaster General.

“electronic form” and “electronic means”

These definitions have been added to reflect the terms used in amendments being made to enable, for example, the service of documents by electronic means.

“explosive”

This has been added because of the addition of new section 133A (Fireworks).

“fireworks”

This has been added because of the addition of new section 133A (Fireworks).

“fish”

This definition has been repealed because it is no longer used in the Act.

“the former seaward limit”

This definition has been moved here from Schedule 1 of the Act to reflect the fact that it is not the current Port limit, which is what is being described in that Schedule. Additionally the text of the definition has been updated with values of latitude and longitude for greater certainty in determining the limits.

“goods”

The definition has been widened to include sludge, waste and rubbish because in certain cases these items may be classed as goods and port rates may, accordingly, be levied on them.

“harbourmaster”

This definition has been extended so that it includes any person authorised by the Port Authority to carry out the functions of a harbourmaster. The type of people who will be authorised are the officers in Port Control and officers undertaking vessel inspections.

“high water level”

A definition of high water level has been added to mean the level of mean high water springs. This is for the purpose of the amendment to the description of the limits which is explained in relation to Schedule 1.

“houseboat”

This new definition has been added in order to help clarify the definition of vessel and the definitions of master and owner in relation to houseboats.

“hydrofoil vessel”

This definition has been varied so that it now includes hydrofoil vessels which were originally designed to be propelled but are no longer, for whatever reason, propelled.

“in writing”

This definition has been added to clarify that certain electronic forms of communication can be included in the meaning of ‘in writing’.

“licence application” and “licence to moor”

These definitions have been repealed to reflect the amendments to licencing regime under Part V.

“lighter” and “lighterman”

These definitions have been repealed to reflect that there are no longer any references to this term in the Act.

“master”

This definition has been amended to reflect the new definitions of houseboat, commercial and club boats and autonomous vessel.

“mean high water level”

This definition has been repealed to update the Act as a consequence of the changes to the description of the limits in Schedule 1.

“mean high water springs”

This definition has been inserted to reflect the changes being made to the definition of the limits under Schedule 1.

“the Minister”

This definition has been amended to reflect the changes to the ministerial functions made by a series of transfer of functions orders and to remove references to parts of the Act that have been repealed.

“mooring”

In this definition there has been inserted further wording to clarify that the term “mooring” includes any type of formal or informal mooring and would extend to fixing a vessel to e.g. another vessel, or other structures, or features, trees, and so on. This has been clarified for the purposes of section 66A in particular and the new mooring permission regime generally.

“mooring permission”

This has been inserted because of the addition of new sections 66A, and consequential

amendments set out in Sections 21, 35 and 39 and the provisions in sections 66A, 66B, 67, 69, 70, 70A, 90 and 137 for the new mooring licence regime.

“navigation”

This new definition has been added to reflect that navigation includes the movement of a vessel whether or not it is travelling between two locations, so long as it is not under tow. It will now include a vessel which undertakes a round trip starting and ending at the same location.

“owner”

This definition has been extended to cover any person with an interest in a vessel as well as the occupier or manager of a houseboat or commercial and club boats.

“passengers”

This definition has been amended to clarify the meaning of crew in this context.

“permission application”

This definition has been added to reflect the amendments to Part V permitting regime.

“pleasure vessel”

This definition has been expanded to ensure consistency with the definition of pleasure vessel included with the Port of London Thames Byelaws 2012. The new definition is wider than the previous definition and includes boats being bareboat chartered or hired.

“port rates”

This has been amended to cover all of the charges which the Port Authority levies on goods so as to ensure that the recovery and enforcement provisions in section 29 of the Act which refer to port rates relate to all such charges.

“port stock”

This definition has been repealed because it is no longer used in the Act.

“the Revenue and Customs”

This definition has been added to update the Act and reflect the definition in s.17(3) of the Commissioners for Revenue and Customs Act 2005.

“river authority”

This definition has been repealed because all bodies which were formerly river authorities have had their powers and duties taken over by the Environment Agency.

“river duties of tonnage”

This definition has been amended to update it with a reference to the Revenue and Customs

instead of Custom House.

“temporary permission”

This definition has been added to clarify that some short term works permissions are deemed to be temporary permissions. This definition is then used in Part V.

“the Surrey Canal”

This definition has been repealed because the term is no longer used in the Act.

“tonnage by measurement”

This definition has been repealed because the term is no longer used in the Act.

“trader”

This definition has been widened to include all goods which have been transported.

“tug”

This definition has been repealed because the term is no longer used in the Act.

“vessel”

This definition has been widened to ensure that any sort of craft which is used on the Thames can be regulated by the Port Authority.

“vessel licence”

This definition is included to enable easy reference to licences granted under s.124(1) of the Act.

“the vessel licensing area”

This has been amended because the vessel licensing area should be effectively the whole of the Thames, including the estuary, designated as inland waters, not just that part of the river to the former seaward limit. The definition of the licensing area has now been classed in terms of those parts of the Thames classed as C or D waters within regulation 2 of the Merchant Shipping (Categorisation of Waters) Regulations 1992 (SI 1992/2356) and MSN 1827(M) (which supersedes MSN 1776(M) which itself superseded MSN 1504 as referred to in the Regulations).

The change in the vessel licensing area means that operators of vessels that transit outside the former seaward limit, but are still within inland waters, will have the option of moving to the Port Authority’s vessel licensing regime from the Maritime and Coastguard Agency’s Coding regime. This may include vessels that regularly transit to the Crouch or the Blackwater, as these are accessible from Category D waters.

The Port Authority’s vessel licensing inspection regime is based on the Thames Freight Standard or Inland Waters Small Passenger Boat Code which both relate specifically to inland waters, rather than the Maritime and Coastguard Agency’s coding regime which is used across a wider

range of water classifications.

“waterman”

For the reasons explained under the definition of “dumb barge” above, the references to “waterman” and “lighterman” have now been repealed.

“works”

This definition has had minor amendments to reflect the amendments to Part V permitting regime.

“works licence”

The definition of works licence has been replaced by a definition of works permission to reflect the amendments to the licencing regime under Part V. The definition explains that it includes a temporary permission unless that is expressly excluded.

“the Yantlet line”

This definition has been amended to reflect the fact that the London Stone North is now in the water and the Crow Stone is on the foreshore. The limits extend beyond these two stones on the same trajectory.

A new subsection (5) has been added to make clear that all latitude and longitude values used in the Act are stated by reference to the Geographical Coordinate System ETRS 1989 reference to the spheroid GRS 1980. This is to provide clarity as to what system of coordinates are used in the Act, and adjustments are made to reflect this in the various provisions of the Act referring to coordinates.

PART II

Constitution of the Port Authority

Section 4A Proceedings

In line with DfT guidance in Modernising Trust Ports, wording with similar effect to section 60 of the Commissioners Clauses Act is now incorporated in the 1968 Act as a new section 4A. It exempts members of the Board from personal liability for their lawful actions as members of the Authority and provides for their indemnification by the Port Authority and for the Port Authority to take out insurance to cover this liability.

PART III

Duties And General Powers of the Port Authority

Section 5 General duties and powers

A new section (2A) is to be added making clear that the power to turn surplus resources to account includes investment, provided such investment is for either the direct or indirect benefit of the undertaking.

Section 7 Hydrographic Surveys

This wording amends the current section 7 to extend Port Authority's surveying function to the current seaward limit (at present this section refers to the former seaward limit) and into the estuary and approaches of the river Thames where regular surveys need to be undertaken because of the shifting sands, and allows Port Authority to publish all surveys it considers should be published, to discharge its functions.

Section 8 Annual Report

Section 8 has been amended to remove the requirement to submit an annual report on the exercise of its functions to the Minister for laying before Parliament. This seems an unnecessary requirement which does not apply to other harbour authorities. The Port Authority will continue to be required like any other harbour authority to report to the Secretary of State under section 42 of the Harbours Act 1964.

Instead subsection (1) now contains an obligation for an annual report on the exercise of their functions to be published and made available on the Port Authority's website or by other electronic means and at their principal office . This will not include a statement of their accounts. This is now required to be published separately under section 59 (Accounts and audit).

Section 11 Powers relating to Land

Subsection (1) has been amended to make clear that the Port Authority has the power to acquire by agreement easements or other rights in land or licences to use land.

Subsection (2) is amended to allow the Port Authority to acquire easements or other rights in land compulsorily instead of acquiring the land outright.

Subsections (3B) to (3F) have been inserted in consequence of changes in the regime for permitting works (explained in relation to section 66 of the Act) and the new provisions for permitting moorings (contained in the new section 66A). Previously the grant of a works licence under section 66 conferred, as well as statutory authorisation for the work, a deemed property

right to place and retain works on the riverbed. The new permitting regime for works (and for mooring) does not grant any property right and it is accordingly necessary for the landowner to obtain a separate right. These provisions deal with the grant of such rights by the Port Authority (and subsection (3) is amended to give the Port Authority the statutory authority to grant such property licences).

In considering a request for such a licence, where such property licence is required in addition to a works or mooring permission, the Port Authority is under similar constraints as it was previously in relation to the grant of a works licence. First, subsection (3B) to (3C) provide the same criteria for assessing the consideration payable for the grant of the property right as previously applied under Section 67 in relation to the grant of a works licence. Any dispute about the amount of consideration is referred to arbitration.

Secondly subsection (3D) to (3F) give a right of appeal in the event of a refusal to grant the necessary property right (or concerning the conditions upon which the right is proposed to be granted). The appeal is determined by the Secretary of State under the new Schedule 4 to the Act, in the same way as an appeal concerning a works or mooring licence.

Finally the new subsection (3G) addresses the position where a landowner who has a permitted river work adjoining their land disposes of the land without disposing of the river work itself. This could give rise to difficulties for the Port Authority because it may need the right to obtain access to the land for inspecting the work, or require the land to continue to provide support for the work. If there is a split between ownership of the land and the work the Port Authority will no longer be able to enforce rights over the adjoining land. This is proposed to be addressed by allowing the Port Authority to impose an obligation on the landowner to obtain a commitment from any subsequent owner to allow the continuing exercise of the Port Authority's rights: this requirement to obtain such a commitment would be protected by registering a restriction on the owner's title at HM Land Registry

11A Application of landlord and tenant law

This new provision is also required in consequence of the changes made in the river works licensing regime. It disapplies the provisions of landlord and tenant law in relation to leases granted for the purpose of a works or mooring permission within the river. This will ensure that the Port Authority is free to terminate a lease for works or mooring within the river and remove the work or vessel when it is necessary to do so in the exercise of its statutory functions.

13 Power to acquire securities, lend money and give guarantees

This is amended to give subsidiaries of the Port Authority the same financial powers as the Port

Authority itself. The reason for this is that the Port Authority is providing assistance to companies or groups along the river and may want to do so via a subsidiary as opposed to the Port Authority itself. In the past it has had subsidiaries such as Port of London Properties limited, but it was limited to providing land in joint partnerships.

Section 18 Refreshment rooms

This is to be repealed as it is unnecessary. The Port Authority has a general power under section 19 (Staff benefits) to provide these facilities. The Port Authority no longer owns the docks and it is not thought necessary to provide specifically for refreshment rooms, canteens, etc. any longer as these were really only needed in the docks.

Section 20 Staff Housing

It is proposed to repeal this section as it too is not necessary. The provisions of section 19 (Staff benefits) would authorise providing housing, if this was deemed appropriate.

Part IV

The Finances of the Port Authority

Section 21 Power to make certain charges

Section 21 has been modified to address certain gaps in the Port Authority's charging powers.

The amendments in subsection (1) allow for charges to be made in respect of cranes, rigs and other floating plant which remain within the limits without entering or leaving the limits and also in respect of goods which are transported within the limits without entering or leaving the limits. This provision supplements the scope of the power to charge goods dues under section 26 of the Harbours Act 1964.

Subsection (2) widens the general power to make charges for services to make clear that the Port Authority has power to recover its costs in connection with the new power to grant property interests or rights in connection with a works or mooring permission under section 11(3A).

The new subsection (4) allows the Port Authority to make total or partial exemptions, rebates or other arrangements in respect of the charges levied for the services under the terms of this section. It follows a similar provision in the Neath Harbour Revision (Constitution) Order 2009 (SI 2009/2207).

Section 22 Charges Regulations

Subsection (1)(a) is amended to allow the Port Authority's charges regulations to prescribe

“how” a charge is to be paid.

(1)(b) The scope of charging regulations which can be made under section 22 is amended to extend those required to provide information in relation to charges to include terminal operators, holders of a works mooring or dredging permission, owners of a work to which a vessel on which charges are payable is moored, or any other person who holds the information. Consequential changes have also been made to subsection (1) to remove reference to exemptions from charging which have been repealed.

Subsection (4)(a) has been amended because it is thought unnecessary and onerous to have to publish extracts from the regulations with each schedule of charges when the regulations are themselves required to be published by the Port Authority under subsection 4(b) and subsection (5)(a) has been amended to remove reference to paragraph (a) of subsection 4.

Section 23 Arrangements with Officer of Revenue and Customs

Subsection (2) is updated to refer to the current legislation under which the register of ships is maintained.

Sections 27, 29 to 30 and 33 (Various exemptions from charges)

Sections 27, 29, 30 and 33, which contain various exemptions from charges, are repealed in their entirety. These statutory exemptions are not consistent with the modern requirement for a harbour authority to charge all users of the harbour on a fair basis reflecting changing circumstances without discriminating on the basis of historic exemptions. Exemptions can where appropriate be included in the Port Authority’s charging schedule and in that way they can be varied as circumstances change.

Section 35 Payment of charges

Subsection 35(2)(a) has been widened to allow recovery of charges on a vessel from its registered owner, operator or agent as well as its owner (for this purpose the definition of owner has been considerably widened) or master. This approach largely follows the provisions of paragraph 5 of Schedule 11A to the Merchant Shipping Act 1995.

A new subsection (2)(aa) has been added to clarify who is responsible for paying charges in relation to passengers.

Charges may also be recovered from the owner of a river work in respect of a vessel moored to that work which is detained under powers in section 39(2)(d).

A new sub-section (3) has been added to identify the person liable to pay charges for works,

dredging or mooring permissions or vessel licence.

Section 36 Security for Charges

This section is being widened to allow the Port Authority to require financial security to be provided not just in respect of a charge which is to be incurred, but in respect of a liability to pay consideration to the Authority. The form of security is not specified but it should be sufficient to guarantee the obligation.

This section also allows the Port Authority to detain a vessel in the docks where such security has not been provided. The wording is amended to allow the Port Authority to detain a vessel in the limits. The Port Authority does not own any of the docks and as a result any detention is likely to take place on the river.

Section 37 Certificate of Payment

The only amendments to this section are to refer to Revenue and Customs.

Section 38 Entry on vessels

As with section 36 the reference in subsection (1) to the docks is deleted.

Sub-section (2) which makes it an offence for a master of a vessel to fail to comply with a reasonable request for information by an officer of the Port Authority is expanded to cover making a false statement.

Section 39 Recovery and enforcement of charges

This section has been widened to increase the Port Authority's enforcement powers in relation to river works and moored vessels. Subsection (2) has been amended to allow the Port Authority to seize a work or vessel until the charges for the works or mooring permission, the consideration payable for use of land in respect of that work or mooring, consideration for and the costs of removal, storage and maintaining the work and the vessel have been paid. This power extends to any vessels moored to a work in respect of which charges or consideration have not been paid.

In addition, subsection 2(b) which allows the seizure of goods not on port premises where port rates are not paid, is extended to cover any other charges on or in respect of goods. As elsewhere the reference in this provision to a dock has been deleted.

Subsections (4) to (12) which authorise the Port Authority to sell detained goods or vessels have been amended in consequence of these changes. Subsection (4) has been amended to allow

the sale of a work and references to a work are also now included in subsection (7) and to a work or vessel in subsection (12). However, a new subsection (5) introduces a safeguard qualifying the power of sale of a vessel, by providing that in a case where the vessel is not owned by the defaulting holder of a works or mooring licence, the power of sale is not to be enforced unless the owner of the vessel has not claimed ownership within 90 days of notification of the proposed sale.

A number of other changes have been made in the enforcement powers of this section.

Sub-section (6) has been widened to cover any person, not just the master of a vessel, removing or attempting to remove, without the Port Authority's consent, goods or a vessel which have been detained.

Subsection (7) has been amended to allow the proceeds of sale to be applied to the costs of the sale and also the Port Authority's costs in seizing, removing pumping out, raising, maintaining or storing any work or vessel. Reference to the costs of sale has also been included in the power to recover costs in subsection (4).

A new subsection (13) clarifies that references to "vessel" include appurtenances, tackle and any chattels on or with it, but personal chattels are excluded based on the descriptions of "exempt goods" under section 9 of the Courts Act 2003 which cannot be seized by an enforcement office (bailiff, sheriff) in exercising a writ.

Finally, by way of a tidying up amendments, subsection 8(a) is being amended so that it refers to sums payable to the Revenue and Customs, subsection (11) so that it provides for a reasonable opinion to be required and the notice to be displayed at the principal office, and the original subsection (5) is being repealed. The latter is a saving for the Port Authority in respect of legislation which no longer applies and is therefore now redundant.

Section 41 Claims for repayment of port rates

This is repealed as a consequence of the repeal of the exemptions to which these claims relate.

Section 46 Port Fund

This is repealed as it is no longer feasible to carry all receipts to and make all payments out of the port fund and there is no longer any need to retain the fund.

Section 47 Application of Port Authority's revenue

References to port stock in subsections (1)(b)(c) and (2) are repealed. There is no longer any port stock as it has all been repaid.

In addition, reflecting changes in accounting terminology this section has been amended to refer to profit and loss statements instead of revenue account.

Sections 48 Borrowing powers

The Port Authority's existing borrowing powers are prescribed and require ministerial approval to use methods and borrow for purposes not currently set out in the Act. Section 48 (Borrowing powers) has been updated to provide a new general and unrestricted power to borrow, which will not need ministerial approval. It is based on precedent in other harbour legislation. It does not include a power to issue bonds, which it is considered is not required.

Section 49 Temporary Loan

Because of the flexible nature of the new powers in section 48, there will no longer be a need for temporary borrowing powers in section 49 and that section is repealed.

Section 52 Ranking of Port Stock

As there is now no port stock and it is not proposed that the power to create new port stock be retained, this section is to be repealed.

Section 53 Stock Regulations

The power to create new stock is no longer required and so this section is to be repealed.

Section 54 Miscellaneous rights of stockholders and others

In consequence of the more general powers to borrow substituted in section 48, and the repeal of the provisions relating to port stock and bonds, this section providing rights in relation to specific categories of loan has been amended to confer rights on lenders generally who have loans secured on the assets of the Port Authority.

Section 55 Regulations relating to bonds

It is proposed to repeal the power of the Port Authority to issue bonds. Accordingly, this provision which regulates the issuing of bonds is also repealed. In addition, the Order will repeal the Port of London Authority (Manner of Borrowing Order) 1968 which is deemed by subsection (4) to have been made under this section. This authorises and imposes requirements as to the issuing of bonds, and is no longer required.

Section 56 Power to charge interest on capital

This section imposes a 10 year limit (except with the consent of the Minister) on the period for which the Port Authority can charge to capital (as part of the cost of a work carried out by them) interest on money raised to pay for the work. It is proposed to remove this limitation. The Port Authority should be free to determine this on a commercial basis and it is not appropriate for this to be subject to ministerial control.

Section 58 Saving for Powers of Treasury

This section is to be repealed as it is now redundant. Section 1 of the Borrowing (Control and Guarantees) Act 1946 was repealed by the Government Trading Act 1990 section 4 and Schedule 2 Part I.

Section 59 Accounts and Audit

Subsection (3) has been amended so that instead of specifying the qualifications required for an auditor of the Port Authority's accounts, it provides simply that an auditor must be eligible for appointment as a statutory auditor, as defined in section 1210 of the Companies Act 2016.

As explained in relation to Section 8 this section now includes an obligation to publish a report including a statement of the audited accounts of the Port Authority and any auditor's report on the accounts on their website or by other suitable electronic means and at their principal office. This replaces the previous requirement to publish a summary of the statement of audited accounts and the auditor's report in one or more daily newspapers. It widens the scope of the information to be published, but removes the unnecessarily onerous requirements to publish in a newspaper.

Part V

The Thames

(a) Operations of the Port Authority

Section 60 Dredging and improvement

Subsection (1) now authorises the Port Authority to dredge and improve the bed and banks of the Thames. The former wording referring to other activities has now been deleted as it is incorporated into a definition in section 2(1) of "dredge".

The Yantlet line now has significance only as an ownership boundary and the downriver limit of

the port is out in the estuary. The proviso is in any case redundant as such matters are now being governed by an application for a marine licence.

Section 61 Protection in relating to dredging

In sub-section (1) it is proposed that the compensation payable by the Port Authority for any damage to property or works arising from dredging or improvement of the bed or banks of the Thames should apply only to legally placed works which the Port Authority will be aware of. The reference to “licence” has been amended to “dredging permission” as the definitions in Part V of the Act have been changed (and see explanation in section 66 below).

In sub-section (2) it is proposed twenty yards be changed to 18 metres rather than 18.28 metres.

Sub-sections (2)(b) and (c) have been deleted as no longer relevant, and instead additions have been made in sub-section (2)(d) and subsection (3) to refer to electronic communications lines and sewers, and their undertakers. Definitions of “electronic communications line” and “electronic communications network” have accordingly been added to section 2(1).

Subsection (4) has been amended to refer to the Environment Agency which has replaced river authorities as the body having functions in relation for drainage works in main rivers.

Section 62 Works in the Thames

Sub-section (2) has been deleted as it is now covered by section 199(2) of the Merchant Shipping Act 1995.

Section 63 Removal of private moorings

This provision confers a saving for certain historic mooring chains placed in the Thames before 1857. Such historic mooring chains have been exempt from the river works licensing regime, although the Port Authority is entitled to remove them on payment of compensation. These mooring chains are not exempt from the requirements of a marine licence under the Marine and Coastal Access Act 2009 and in order to keep the two regimes in alignment it is proposed to bring these historic moorings into the new permitting regime, but with an automatic entitlement for those who have enjoyed historic rights and exercised those rights in recent years to obtain a works permit under the new permitting regime.

The existing section 63 is replaced by a new provision which requires owners of historic moorings chains to apply to register the chain within a 3 year period, supplying evidence that the mooring chain dates from 1857, demonstrating that it has been used without interruption over the past 20 years and demonstrating that the owner has the necessary property right to retain and

use the chain (the Order will however include an exception from the requirement to prove continuous use for certain specific mooring chains which have been declared by the courts in a recent case to be exempt mooring chains for the purpose of section 63).

On registration of the mooring chain the Port Authority must grant the relevant works permit for the mooring chain, without requiring payment of a fee. If registration is refused the owner of the chain is deemed to be in breach of section 70 (Works, dredging or mooring without permission) and unless the owner applies for and obtains a work permit the Port authority may remove the chain. There is a right of appeal against refusal to register the mooring chain or any terms imposed in the works permit which is granted on registration.

During the registration period and before registration the Port Authority retains the rights which it currently enjoys under subsection (2) of section 63, to remove the mooring chain on payment of compensation (but compensation is only payable if the mooring chain has been in use for the previous 3 years).

After the registration period, any mooring chains to which this section applies which have not been registered or granted a works permission, or in respect of which there is no outstanding application or appeal and in relation to which no property interest has been established, will vest in the Port Authority under subsection (10). In this situation it is necessary to be certain as to ownership as no ownership has been established.

Transitional provisions have been included in the Order in relation to some specific moorings which are the subject of agreement between the Port Authority and the owners of the mooring.

Section 65 Reclaiming creeks etc.

Section 65(1)(a) has been amended to make clear that the Port Authority must obtain the consent of the Crown in writing before the Port Authority exercises its powers under subsection (1) to reclaim creeks and other inlets and areas adjoining the Thames in relation to Crown land. In the light of that it has been agreed that the saving for land in front of land of the Crown in section 2(1)(b) is unnecessary and can be repealed. New subsection (2) provides a definition of “in front of” for clarity in relation to subsection (1)(b).

(b) Control of works and dredging

Section 66 Licensing of works

A number of changes are made to the works licensing regime under Part 5 of the Act, in order to bring it in closer alignment with the marine licensing regime under Part 4 of the Marine and

Coastal Access Act 2009 (MCAA). First, whereas a works licence had previously granted a property right as well as statutory authority for the works, under the revised regime section 66 will confer just a statutory consent, leaving the property rights to be conferred separately. The section 66 consent will therefore correspond more closely to a land based planning permission or a marine licence, which avoid confusing the decision-making process by introducing property matters into that process. Accordingly Subsection 1(a) is amended to remove reference to “consideration” which is now reflected in the property right granted under section 11 and subsection 1(b) has been amended to make clear that a property licence will also be required before any works authorised by the permission under this section can be implemented. Subsection 1(a) also clarifies that a works permission will authorise the use as well as the construction of a river work and that the permission may include conditions as to termination.

Secondly, in the light of this, the description of the consent granted is changed from a “works licence” to a “works permission” distinguishing the consent from the property licence which will also now be required. The same approach has been adopted in relation to dredging licences and the newly introduced mooring permissions (section 66A). Thirdly, the process for obtaining works permission (and dredging and mooring permissions) and for the control of works, dredging and mooring have been revised to reflect the more up-to-date and transparent powers in the MMO’s licensing provisions in Part 4 of the MCAA. This will make it easier for DEFRA, DfT and the MMO to agree a delegation of marine licensing to the Port Authority in the future. As a result, the provisions in relation to the handling and determination of permission applications and a corresponding requirement for a public register have been included in new sections 66B, 66C and 66D.

Finally, on grounds of navigational safety the Port Authority needs the ability to be able to review, amend and potentially revoke existing works licences in the light of changing circumstances in the river (or where a work has been abandoned.) Accordingly, revised subsections (2) to (3B) have been inserted to allow for and set out the circumstances for review, variation, suspension, revocation and termination of the terms of a works permission.

Subsection (4) now refers to “high water level” as defined reflecting the revised extent of the Port Authority’s limits explained in relation to Schedule 1.

The provisions of subsections (6) and (7) have been amended to reflect the position in section 61, substituting for references to the cables of the Postmaster General references to “electronic communications line” and “electronic communications network”, as defined in section 2(1), and the Environment Agency in place of a river authority.

Subsection (8) has been added to clarify that nothing in this section affects the requirement for consent under any other enactment.

A transitional provision has been included within the Order to clarify that where a works licence

has been granted prior to the bringing into force of the Order, this is to be deemed to have been granted as a works permission under section 66. It confirms that the rights conferred upon the holder of the works licence by section 66(1)(b) will continue to apply notwithstanding the repeal of that provision.

Section 66A Permitting of mooring

Section 66A introduces a new mooring permission for vessels on the river Thames. This will allow the Port Authority to regulate the mooring of vessels on the river and enforce against vessels which are mooring without authorisation or contrary to the safety of navigation in the river and is considered desirable in the interests of the safe and efficient use and management of the Thames. Certain exemptions from the requirement for a permission are set out in section 70 and explained in relation to that section. It should be noted that if a works permission has been granted which permits mooring of vessels to the permitted works, a separate mooring permission will not be needed.

As with a works permission, a mooring permission will confer a statutory defence for an activity which interferes with the public right of navigation that would otherwise give rise to an action in public nuisance. However, like a works permission it will not confer a property right to moor a vessel, which will need to be obtained separately from the owner of the bed of the river.

Section 66A mirrors for mooring permissions the provisions in section 66 for works permissions.

A transitional provision has been included in the Order to make clear that a holder of an existing licence or agreement to moor granted by the Port Authority prior to the commencement date is not required to apply for a mooring permission under section 66A in relation to that mooring.

Section 66B Permission applications

This new section covers applications for works, dredging and mooring permissions under sections 66, 66A and 73.

It is based on sections 67 and 68 of the MCAA but subsection (1) also incorporates requirements from the PLA's former section 66(2) to make application in writing accompanied by plans, sections and full particulars, and allow the Port Authority to require modifications to the documents submitted.

Subsections 3 and 4 set out means for the Port Authority to gather if necessary through investigations, examinations and tests sufficient information and obtain any necessary fees to register an application. Subsections (5) and (9) make it clear that registration under section 66B is a pre-condition to determination of an application in accordance with new section 66C, and the

Port Authority is entitled to refuse to proceed with an application unless and until an applicant complies with the requirements of this section. Following registration a works or dredging permission application is publicised to bring it to the attention of anyone likely to be interested in it (subsections (6) to (8)) unless the Port Authority consider in a particular case that notice need not be published or the Government confirms that publication would not be in the public interest (subsection 10). Subsection (6) also makes clear that the publication requirements do not apply to an application for temporary permission.

Section 66C Determination of permission applications

Under subsection (1) the Port Authority can only determine a permission application if it has been registered and where required, publicised, under section 66B. The matters the Port Authority must have regard to in determining an application are (necessarily) different from those set out in the MMO's section 69(1). Sub-section (2) provides that the Port Authority has a duty when determining any permission application to have regard to its legal powers and duties, the ability of the applicant to comply with permission terms and conditions and to any representations made during the notice period publicised in section 66B(6). Under subsection (3) the Port Authority must consider the use to be made of the works and sub-section (4) reflects the current three month period for deciding on an application with provision for extension of time with the applicant's agreement. Subsection (5) provides that sufficient security may be required to be provided to guarantee any obligations arising from the grant of the permission.

Section 66D Public register of permission applications

New section 66D requires the Port Authority to maintain a public register of information relating to works, mooring and dredging permissions granted, with exclusions on grounds of national security or commercial confidentiality. The register will provide a public record of all the permitted works (aside from those authorised under a temporary permission, unless the Port Authority decides to include them), dredging and mooring on the Thames, to assist for instance in enforcement under section 70 or specific information in relation to an incident on the Thames.

Section 67 Charge for permission

This section has been modified as the consideration for a works licence includes both the property element (which is now charged under section 11 in relation to grant of a property right) and other administrative charges which were not identified. The different elements of those administrative charges which the Port Authority may impose (whether or not the work is on the Port Authority's land) in relation to a permission, a charge for determining the permission and a

separate charge for monitoring compliance with the terms of a permission, are now set out transparently in this section.

Section 68 Exemption for works authorised or powers conferred before 17 August 1894

As any works authorised prior to 17 August 1894 will have been completed long ago, it is proposed to repeal this section.

Section 69 Appeal to the Minister

To reflect changes in government functions since 1968 and current practice for works licence appeals, the heading and content of this section substitute “the Minister” (defined in section 2(1) as the Secretary of State) in place of all references to the “Board of Trade”. Consequential amendments have been made in light of the changes in sections 66, 66A, 66B and 66C from a licensing regime to a permissions regime and the scope of the appeal provisions have been extended to cover works, the dredging and mooring permissions. Section 69(1)(b) makes clear that the appeals provision does not extend to the terms of any reassessment of the fee for a permission. The appeals arrangements in Schedule 4 have also been updated (see below).

Section 70 Works, dredging or mooring without permission

This section has been expanded generally to include other permissions granted under this part of the Act and subsection (1) has therefore been expanded to prohibit a person, or causing another person to carry out works, dredge or moor a vessel without or in breach of the terms of a permission under sections 66, 66A or 73. Subsection (1) also includes the words “cause or permit” to cover the situation where the applicant is not in a position to comply with the conditions e.g. where the applicant has rented a flat with a balcony and is not given the right, in the lease, to remove the balcony.

Subsection 1A has been included to provide exemptions to the need to obtain a mooring permission where a vessel is moored temporarily, or is moored under rights in a works permission, is moored to a historic mooring under section 63 until such time as a new permission is granted or an appeal is determined, or is a Port Authority vessel.

Subsection (2) retains in respect of breach of or failure to have a works permission a fine not exceeding level 5 and introduces a fine not exceeding level 4 for breach of or failure to have a dredging or mooring permission. Note that the scope of a Harbour Revision Order to create a new offence is limited by section 14(3) of the Harbours Act 1964 to a penalty not higher than level 4 on the standard scale.

The remediation provisions in subsection (3) have been considerably expanded and new subsections introduced to allow the Port Authority to serve a stop notice as prescribed in subsection (4) and require the site to be restored to its former condition. The stop notice provisions reflect the MMOs powers under s102 of the MCAA. If a person fails to comply with the stop notice subsection (5) authorises the Port Authority to seek an injunction, and carry out any remedial works or actions necessary in their reasonable opinion, to recover the costs of doing so and sell or dispose of an associated work or vessel. Subsection (9) requires that, except in an emergency, the Port Authority must give at least 7 days' notice of their intention to the owner before removing any works or vessels. Later subsections allow for recovery from the owner of costs the Port Authority has incurred under this section, including any outstanding fees, costs concerning the service of notices, works to remediate of the site, removal and storage of a vessel or works and any sale. The Port Authority is permitted to retain any surplus if the owner has not come forward within 3 months of a sale, or to recover any deficit from an owner as a debt, but they must return an unsold vessel to its owner if their costs relating to that vessel are paid.

Section 70A Emergency Safety Notice

This section has been adapted from the MMO provisions in section 104 of the MCAA. It provides for a notice to be issued requiring the provision of lights, signals or other aids to navigation or the stationing of guard vessels. It applies to any permitted works, mooring or dredging activity which in the reasonable opinion of the Port Authority are or are likely to become an obstruction, danger or impediment to the safe or convenient navigation or use or conservancy of the Thames. The Port Authority must state their grounds in the emergency safety notice, must state the date and time from which the requirements take effect and may specify steps to ensure compliance is undertaken safely (subsection (5)). The notice is to be served on the permission holder and, if relevant, and there is no permission, on the person on whom a notice has already been served under section 70(3) relating to a breach of that section. Subsection (7) allows the Port Authority to revoke or vary an emergency safety notice. The penalty for non-compliance is a fine at level 4 on the standard scale.

Section 72 Vesting of embanked land

The section vesting embanked land is to be repealed. In future any land owned by the Port Authority that is embanked will either be sold or leased to the licensee, when the embankment is completed. The Order contains transitional provisions which provide for the vesting of existing embankments which have been completed and for vesting still to occur where embankments have been authorised by the Port Authority but not completed.

Section 73 Permitting of dredging, etc.

This section has been amended and extended on terms consistent with the requirements for works and moorings permissions. It now provides for variation, suspension, revocation and termination.

Subsection (7) has been added to clarify that nothing in this section affects the requirement for consent under any other enactment.

Section 74 Crown property

This section has been amended to provide for permissions and permitting.

Section 75 Lands above mean high water level

This section has been repealed because the permitting regime has now been extended to high water level by the revised extent of the Port Authority's limits explained in relation to Schedule 1.

Section 75A Transfer of work or mooring

This new provision requires that where a work or vessel is to be transferred the person to whom an interest is transferred (transferee) must apply for a new permission, although they do not need to publish it in line with s.66B(6) and give the Port Authority (if requested) details of any person having a current interest in the work or vessel. The person transferring their interest must give the Port Authority within 28 days of doing so details of the transferee and remains liable for the work or vessel until a new permission is granted to the transferee. The transferee must obtain the necessary property right to enjoy a works or mooring licence granted. Failure to provide the details is subject to a fine not exceeding level 3 on the standard scale.

These provisions are intended to assist the Port Authority in the control of licensed works and moorings and to enable it to identify and enforce against the licence holder or any other person who has an interest in the work or mooring where the licence has been transferred and the terms of a licence are not being complied with or the work has fallen into disrepair.

This will not apply to a dredging licence.

(b) Obligations relating to tidal works

Section 76 Works to be approved by Board of Trade

This section is to be repealed as it has now been replaced by the Marine and Coastal Access Act 2009 and is redundant, such matters now being governed by an application for a marine licence.

Section 77 Provision against danger to navigation

Sub-section (1) is qualified to enable the Port Authority to monitor a tidal work once it becomes aware of its decay or destruction and to lay down buoys, lights and take other steps to prevent danger to navigation if it considers it necessary to do so.

Section 80A Permanent lights on works

So as to prevent danger to navigation, this new section makes provision for the harbourmaster to require permitted works and works of statutory undertakers in the Thames to be lit at night and during times of restricted visibility. This will remove the need to include specific provisions for this in each works licence and also remedies a gap in the legislation in relation to works of statutory undertakers. It will be an offence to fail to comply with the harbourmaster's requirements, and the Port Authority will also be able to pursue an injunction as to compliance. Further, they are authorised to enter on land and the work in order to light or repair or replace existing lights on works and recover the costs of doing so as a debt.

(d) Landing places

Section 84 Marked landing places

Sub-section (1) is amended to permit the Port Authority to remove or close or permanently interfere with those public landing places owned by the Port Authority which were so labelled in 1967. These were landing places used historically by the Watermen to ply for trade and since the practice (and indeed the waterman as was) has ceased, this provision is no longer required.

Section 85 Agreements about called at landing places

The reference to "waterman" has been changed to "master". This widens the requirement as a boatmaster is required on commercial vessels which do not fall within pilotage but private vessels may also want to enter into an agreement to use a landing place and not have a boatmaster in

charge.

(e) Fish

(f) Richmond lock, footbridge, etc.

Section 88 Maintenance of Richmond works and working of sluices

The consent of the Board of Trade in sub-section (2) has been deleted as this section is dealing with protection of navigation and it is not considered that this judgment is appropriate for the Secretary of State to make. The height in subsection (1) has been converted to metric measurement.

(g) Entry on land to survey, etc.

Section 89 Construction of references to Trinity High Water

In sub-section (1) 11.4 feet has been converted to the metric: 3.5 metres.

Section 90 Entry on land to survey, etc.

This section has been expanded to widen the powers of the Port Authority to enter on to third party land by including new powers to enter for the purposes of monitoring compliance with the terms of a works, dredging or mooring permission, for the investigation of a navigational incident and, for consistency with section 137 (Powers of inspection of works and vessels) in relation to works and vessels, in relation to any enactment conferring powers or duties on the Port Authority.

A new subsection (1A) ensures that an authorised officer entering land under this section has the powers contained in subsections (2) and (5) to (8) of section 137.

A new subsection (3A) clarifies that compensation under subsection (3) will not be payable in respect of damage necessarily caused while identifying that there has been a breach of a permission.

The new subsection (5) enables the Port Authority to authorise a constable to exercise these powers subject to the requirements of subsection (6).

Section 91 Times when public use of Thames may be restricted

This section has been amended to widen the purposes for which public access may be restricted

in subsection (1), to include any works or operations on or adjacent to the river, and any event or activity taking place on or over the river and to preserve safety and security of the public. This reflects the wider use that is now made of the Thames.

In subsection (2) the power to impose a restriction or exclusion has been qualified so as not to extend for longer than is required for that particular purpose. The Port Authority is now required under modified subsection (3) to give notice in an appropriate form as soon as reasonably practicable to persons likely to be affected by the exclusion or restriction.

Subsection (4) imposes an offence where a person enters a restricted or excluded area without consent, lawful authority or reasonable excuse.

Section 92 Abatement of nuisances

The provisions of this section have been extended to enable the Port Authority to recover as a debt in the courts the expenses it incurs in abating a nuisance or annoyance from the person who created it.

Section 93A Disapplication of the Commons Act 2006

This new provision is precedent including in the River Mersey (Mersey Gateway Bridge) Order 2011 (SI 2011/41) Transport and Works Order. Through disapplication of section 15 of the Commons Act 2006 there can be no registration of the foreshore, banks or bed of the Thames as village green or common. This is to address concerns arising following the Newhaven case (*R (on application of Newhaven Port and Properties Ltd) v East Sussex County Council* [2013] EWCA Civ 276).

Section 93B Grab chains and escape ladders

A new section has been included which gives the Port Authority the power to requiring the owners of land adjoining the Thames to install and maintain such grab chains and escape ladders as the Port Authority may reasonably require. These safety measures were expressly recommended in the report of the Thames Safety Inquiry as beneficial life saving measures to have along the length of the river and so this new section gives the Port Authority greater power to ensure that they are installed and maintained.

Subsection (2) of the new section allows an adjoining landowner to object to a requirement to install this equipment on the ground that it is not practicable to do so. In this situation, that matter must be referred to be determined by a single arbitrator.

Subsection (3) makes non-compliance with a requirement under subsection (1) an offence,

unless there has been a successful objection under subsection (2) and enables the Port Authority to go onto the land for the purpose of installation or maintenance of the equipment and reclaim their costs in doing so.

Subsection (4) clarifies that the Port Authority's requirements under subsection 1 are also enforceable in civil proceedings for an injunction.

Part VII

Vessels and Navigation

(a) Regulation of vessels in the Thames and the docks

Section 108 General rules for navigation

This section creates two offences in relation to navigation on the Thames: firstly, in paragraph (a), the navigation of a vessel on the Thames by the master without due care and attention and, secondly, in paragraph (b), the navigation of a vessel on the Thames by the master in a manner liable to injure or endanger persons, other vessels, the banks or any structure or installation. Paragraph (b) to this section has been amended to add the words "whether or not such navigation was also without due care and attention". This is to clarify the difference from paragraph (a) because problems have arisen due to the similarity of the two offences.

Section 110 Overcrowding of vessels

This section sets out rules in relation to the overcrowding of vessels. In subsection (1) the use of the word "carry" means that this provision currently does not apply to a moored vessel which has too many people aboard. The word "carry" has been changed to "have on board" in order to clarify that this section covers static vessels.

Subsection (2) has been updated with a reference to the Merchant Shipping (Survey and Certification) Regulations 2015.

Section 112 Special directions to vessels in the Thames

Subsection (1) has been amended to make clear that a special direction may override any of the permissions which might be granted under the permitting regime in Part V.

The purposes for which the harbourmaster may give special directions set out in subsection (2)

are extended. Sub-section (a) allows direction to require compliance with byelaws and other statutory powers of the Port Authority. Subparagraph (c) has been expanded to allow regulation of waste and the supply of services. A new subparagraph (d) has been added enabling special directions to be given in relation to a restriction or exclusion imposed under section 91 (Times when public use of Thames may be restricted) and a new subparagraph (e) enables special directions to be given in relation to the embarking or landing of passengers.

A new subsection (3) clarifies that in an emergency a special direction given for the purposes set out in subsection (2) may be given to all vessels or to a class of vessels on the river.

Section 117 Failure to comply with directions

Section 117 has been adjusted to allow for the offence of failing to comply with a general or special direction to be triable either way and to set out an unlimited fine in the case of a fine on conviction on indictment. This is considered an appropriate approach to deal with matters where safety of navigation on the Thames is put in jeopardy by non-compliance.

Section 118 Enforcement of directions

As the term “lighter” is no longer used in the Act, for reasons explained in relation to section 2, in this case, where it is appropriate to retain wording to make an exception to the requirements of the section for an unpowered vessel of similar nature, the term “dumb barge” has been substituted in place of “lighter”. A new definition of “dumb barge” has been added in section 2.

Section 119 Regulation of crowds

Section 119(1), authorises the giving of orders by the Commissioner of the Metropolitan Police, with a view to maintaining public order and safety and has been widened to allow “a Police Officer of at least the rank of Assistant Chief Constable” to give such orders, because the Port Authority’s area extends beyond the bounds of the Metropolitan police area, for instance, into the City of London, Essex and Kent.

(b) Obstructions and similar hazards to navigation

Section 120 Power to raise and remove vessels sunk, etc.

Subsection (1) of section 120 has been amended to provide the Port Authority with a power rather than a duty to remove a sunk or abandoned vessel, which it may appoint a contractor to

undertake. Similar provisions under the Merchant Shipping Act and section 56 of the Harbours Docks and Piers Clauses Act which apply at other ports are expressed as powers rather than duties, and the Medway local legalisation simply modifies the Merchant Shipping Act powers, while keeping them as a power. The Port Authority wishes to ensure that it is properly able to exercise judgment in the way that other harbour authorities are able to do, as to the exercise of its functions. It will remain subject to the common law duties of harbour authorities that so long as their harbour remains open for public use they must take reasonable care that those who use it can do so without danger to their lives and property.

The reference to duties and taxes in subsection (2) has been simplified so as to cover any duties or taxes under any enactment. This is to ensure that all forms of liability are covered.

In subsection (5), which deals with situations where the owner of the vessel is not known, consistent with other changes to the Act, for the reference to “head office” there is substituted “principal office”, on the basis that the Port Authority no longer has a head office. Further minor amendments are made to enable the notice to be displayed online.

Subsection (7) has been amended to clarify that the powers in this section can also be used in relation to any equipment on the vessel and a new subsection (8) enables the Port Authority to appoint a third person to carry out the practical actions under this section.

Section 120A Power to deal with unseaworthy vessels

This is a new section which provides the Port Authority with a new power to deal with unseaworthy vessels, which is required to assist in the interests of safe navigation. It is based on the powers in section 15 of the Harwich Harbour Act 1974. It will allow the Port Authority to deal with vessels to which section 120 does not apply.

Section 120B Sale or disposal of vessels

A new section 120B has been added to include further details concerning the mechanism for the sale or disposal of vessels by the Port Authority and provides that the vessel will vest in the new owner free of any mortgage or other charge, deals with registration of the new owner and provides that where the vessel is destroyed or disposed of notice must be given to the Registrar of Shipping.

Section 121 Removal of obstructions other than vessels

Section 121 gives the Port Authority the power to remove various obstructions in given situations. Subsection (1) has now been amended such that, if it is not reasonably practicable to remove the

obstruction without destroying it, the Port Authority may destroy it. A consequential amendment has been made to subsection (6).

All the towpaths along the Thames have now become public highways, footpaths or byways and the responsibility of the local highway authorities and so the reference to “towpath on the Thames” has been removed from subsection (1)(b). It has been replaced with a reference to “landing place” because the Port Authority has concerns with the obstruction of public landing places and draw docks.

The list of local authorities in subsection (7) has been updated to include the Greater London Authority.

Section 122 Removal of projections

Section 122 gives the Port Authority powers to remove or destroy projections in the river. Subsection (1) has one minor amendment in order to reflect the new permitting regime in Part V such that the definition of projection does not include anything authorised by a works permission.

Subsection (2)(a) is widened to include any projection which already is or which is likely to become a danger to navigation and a reference to use is added such that it covers danger to the use of the river. This ensures consistency with section 120 and 121. A reference to “likely to become” has also been added to subsection (3)(a).

Subsection (6) has been repealed as the wording of section 84 has been changed and the cross-reference is no longer appropriate.

(c) Registration of lighters, tugs and boats

Section 124 Unlicensed vessels not to be navigated

This section sets up a regime for the licencing of certain vessels within the vessel licensing area including a number of exemptions under subsection (2). Subsection (2)(d) has been amended to reflect the change in the definitions, but applies to the same vessels. Under subsection (2)(f), there is now inserted a qualification to the exemption for vessels licensed by another local authority or navigation authority, so that the exemption will only apply to those other licences which the Port Authority considers to be appropriate. In the interests of safety of navigation on the Thames, it is thought desirable to ensure a comparable standard of assessment for vessels.

A new subsection (2A) has been introduced. The Thames byelaws permit certain vessels approved by the harbourmaster, by the issue of a certificate of compliance, to exceed the existing speed limit, up to a higher limit, within a particular stretch of the river. In the interests of

public safety and navigation on the Thames, the Port Authority considers it to be appropriate in the case of all vessels carrying 12 or less passengers which obtain a certificate from the harbourmaster to exceed the speed limit to be licensed by the Port Authority, under section 124.

Subsection (5)(a) has been amended such that a vessel can be navigated, worked or moored within an area four times in any period of 12 months and be treated as being only occasionally in the vessel licensing area. This change has been made to allow for two returns if the vessel navigates through the limits.

Section 125 Power to refuse or revoke or suspend or terminate a licence

With a new vessel mooring permit regime being introduced subsection (1) is amended to make clear that this section relates to licensing of vessels under section 124.

To ensure consistency with other sections of the Act, a reference to termination has been added to the heading and to subsection (1) alongside the existing references to revocation and suspension.

Section 126 Appeals

The amendment to subsection (1) is consequential on the earlier amendment to the heading of section 125 (Power to refuse or revoke or suspend or terminate a licence).

Section 128 Registers to record mortgages, etc., and to be open to inspection

This section has been repealed because it is not considered necessary for the purposes or functions of the Port Authority to hold such details of mortgages on a register.

(d) Miscellaneous

133 Lights detrimental to navigation

The PLA is faced with increased use of lights along the river, including lasers, which may be a hazard to navigation. Particularly in the case of a laser interfering with navigation, the PLA will want to be able to stop its use immediately, rather than issue a written notice. The provisions of this section have therefore been amended to omit the reference to a written notice in subsection (1) and consequential amendments have been made in subsection (2).

Section 133A Fireworks

A new section 133A has been included to address specifically the increasing use of or lighting of fireworks or explosives on or over the Thames. The concern is that they can mislead vessels on the river or interfere with safe navigation. They may also be mistaken for distress signals. Subsection (1) will require the Port Authority's prior written consent to the use of fireworks or explosives which interfere with safe navigation or mislead vessels, which may be given subject to conditions.

Subsection (2) makes it an offence not to comply with the provisions of subsection (1) without lawful authority or reasonable excuse.

Section 134 Damage by a vessel

Section 134 details situations in which owners of vessels might be liable to pay the Port Authority the cost of making good damage. This section has been extended to include in subsection (1)(a)(i) reference to "the bed of the Thames", to make clear that the Port Authority can recoup the costs of making good damage to the bed of the river caused by a vessel. A new subsection (1)(a)(iii) has been added to include damage done to any vessel belonging to or chartered or hired by the Port Authority.

In subparagraph (b) it is clarified that among the costs which can be recovered as a debt through the courts are the costs of surveying a vessel or the bed of the river.

Section 136 Giving false draught

Subsection (1) has been amended so that the requirement for a master to state the draught of his vessel if required to do so covers vessels entering or leaving the limits, not just docks. This will be needed to ascertain vessel charges and to check passage plans. The reference to dockmaster has been updated to refer to harbourmaster since the Port Authority does not have a dockmaster.

Section 137 Power of inspection of works and vessels

Section 137 is extended to allow the Port Authority to board works, as well as vessels, anywhere within its limits, for inspection. The heading is amended accordingly. The expanded subsection (1) gives three new purposes for the entry onto to the work or vessel: for investigation of a navigational incident, in connection with a permission under Part V of the Act and to carry out a survey of the bed of the Thames.

Subsection (2) introduces further powers for an authorised officer while exercising the powers in

subsection (1) which relate to the specific inspection of items including documents etc.

The new subsections (3) and (4) enable the authorised officer to direct a vessel to stop for the purposes of embarkation and disembarkation from a vessel or work.

There are new obligations on individuals to provide information and assistance to the officer and it is an offence for a person to refuse to give requested information or to give misleading information.

The new subsection (9) enables the Port Authority to authorise a constable to exercise these powers.

This expanded subsection is based on the inspection powers granted to the Marine Management Organisation under the Marine and Coastal Access Act 2009 and reflects the desire to bring the Port Authority's works permitting functions into alignment with the marine licencing regime.

Section 138 Identity of master and owner or occupier

The amendments to section 138 are made in order to assist the Port Authority in identifying the master owner and occupier of a vessel. At present there is no power to require a master to give his name and address or that of the vessel's owner nor the occupier the name of the owner. The amendments to section 138 now require a master to provide his own name and address and that of the owner, if it is known to him, and the occupier to give the name of the owner. If he does not do so, or gives false information, subsection (2) provides that he commits an offence.

Subsection (3) largely follows what was subsection (1) though it is widened in extent to include the master and occupier, as well as the owner of a vessel to give the Port Authority information as to who was the master of the vessel at a given time. Subsection (4) allows the Port Authority to use any information obtained under subsection (3) as evidence to determine the identity of the owner, occupier or master of a vessel at a particular time.

Section 138A Power to require information in relation to the investigation of a navigational incident

Under the Thames Byelaws 2012 byelaw 8 a vessel master is required to make a verbal report followed by a written report of any accidents and incidents involving his vessel but at present the Port Authority has no general power to require information and so a new section 138B has been added to give this power in relation to the investigation of navigational incidents. Subsection (2) makes it an offence for a person to refuse to give the required information or to give false, inaccurate or misleading information.

Section 138B Autonomous vessels

A new section 138B has been added to assist the Port Authority in dealing with the increased availability and use of autonomous vessels. Some forms of autonomous vessel can operate without any person being on the vessel and some operate without any person being in control of the vessel even remotely. This would make it impossible for a harbourmaster to issue and ensure compliance with directions.

The new section requires that before the owner of an autonomous vessel permits it to enter the Thames, they must first provide the harbourmaster with a notice containing full details of a person who is either in control or who is able to take control of the vessel remotely. This will ensure that the harbourmaster has the contact details of a person to whom he is able to issue directions in relation to the vessel.

The new section makes it an offence to allow an autonomous vessel to enter the Thames without giving this notice. The owner would be liable to a fine not exceeding level 4 on the standard scale for committing such offence.

PART VIII

WATERMEN AND LIGHTERMEN

Sections 139 (Register of watermen and lightermen) and 140 (Fees for licences and list of fares)

The repeal of sections 139 to 140 reflects the fact that the watermen and lightermen no longer have any statutory role under the 1968 Act and the Port Authority no longer has any power under section 164 of the Act to make byelaws for their government and regulation. It is therefore inappropriate for the Port Authority to continue to register them.

PART IX

GOODS TRAFFIC

(a) General

Section 141 Account of imports to be given to Port Authority

This section has been repealed. The Port Authority will in future set out its requirements in relation to charges under section 22 (Charges regulations).

Section 142 Power to survey goods

Section 142 provides for the examination of goods. As the Port Authority no longer has the docks this may now need to take place within the limits which encompasses anywhere on the river. For this reason, the wording “or within the limits” has been added to subparagraphs (a) and (b).

Section 145 Customs entry by Port Authority

Minor amendments have been made to update this section to reflect the modern position of Revenue and Customs.

Section 147 Passes for goods

The reference to the Port Authority’s police in this section has been deleted as the Port Authority no longer has a police force.

Section 148 Accommodation for customs officers

This section has been repealed because the Port Authority no longer provides accommodation for customs officers. The only accommodation there may have been immediately before the commencement of the Act which still exists will be in the Port of Tilbury and provided by the Port of Tilbury (London) Limited. With the closure of the upper docks the provision for accommodation on a similar scale to that provided by the Port Authority at the commencement of this Act is no longer possible.

(b) Safety precautions

PART XI

BYELAWS

Section 162 Thames byelaws

Subsection (1) of this section sets out the purposes for which the Port Authority may make byelaws for the Thames. The reference to “towpaths” in subsection (1)(f) has been deleted because all the towpaths along the Thames have now become public highways, footpaths or

byways and the responsibility of the local highway authorities. Subsection (1)(h) has been amended to cover nuisances under or over the Thames as well as in the river. A new subparagraph (m) has been added to allow the Port Authority to make byelaws for the purposes of securing the conservation of the natural beauty of the countryside and of flora, fauna and geological or physiographical features of special interest, which wording is consistent with all harbour authorities' environmental duties as set out in section 48A of the Harbours Act 1964. A new subparagraph (n) has been added to allow the Port Authority to make byelaws to regulate bunkering. Bunkering is carried out in river and has been carried out in the estuary and this subparagraph enables the Port Authority to bring in a byelaw dealing with its safe handling, if thought necessary.

Section 167 Fines for breach of byelaws

Paragraph (d) of section 167 has been amended to raise the fine in relation to a breach of byelaws relating to port premises under section 161 to level 4 on the standard scale and to a daily fine not exceeding £50 to allow for the seriousness of a breach of these byelaws.

Section 168 Confirmation of byelaws

The purpose of the amendment to subsection (3)(a) of the byelaw confirmation procedure in section 168 is to limit the obligations of the Port Authority in advertising the intention to apply to the Secretary of State for confirmation. It is thought that in comparison to the publication provisions for byelaws made under local government legislation, which only require publication in one or more local newspapers circulating in the areas to which the byelaws are to apply, the current obligations are more onerous. Under the amended section, the Port Authority will have to publish in the London Gazette and in one or more newspapers circulating in the area to which the byelaws apply. In the case of byelaws affecting all of the limits, this will still be an extensive area which will require advertisement in newspapers in the London, Essex and Kent areas.

The Greater London Authority has been added to the list of local authorities to receive a copy of the notice if the byelaws affect Greater London.

The requirement to give notice to every river authority has been replaced with an obligation to give notice to the Environment Agency to reflect the fact that the EA has taken on the powers and duties of the river authorities.

As mentioned above, as the Port Authority has no head office, these words have been replaced with a reference in subsection (3)(c) to "principal office".

Through its website the Port Authority also conveys statutory and other information affecting river users, and it is likely that copies of the byelaws will be available to download without payment or

charge. The Port Authority may also choose not to charge for hard copies of the byelaws and for this reason the words “if demanded” have been added to the end of subsection (3)(d).

Section 169 Proof of byelaws

This section has been amended such that copy of the byelaws can be authenticated by the seal of the Port Authority only. It is no longer required to have the signature of the secretary in addition.

PART XIII

MISCELLANEOUS PROVISIONS

(a) General

Section 175 Application of Town and Country Planning Acts to Port Authority’s land

Section 175 is repealed because it is unclear and appears to be quite unnecessary. It was included in the 1968 Act for historical reasons which no longer apply as The Planning Act 1990 and the General Permitted Development Order now apply to the Port Authority as they do in relation to other harbour authorities. This provision does not help to clarify and only confuses the position. However, the position of the river bed needs clarification and the opportunity has been taken to make clear that it is operational land.

Section 175A Rights of way over licensed works and land of the Port Authority

A new section 175A is added to address the concern that rights of way may be acquired by long use over licensed works or approaches to them. The effect of such rights being acquired is that the Port Authority could not remove the work if it is abandoned or becomes a danger to navigation or the conservancy. This provision is based on section 57 of the British Transport Commission Act 1949 which prevents such rights being acquired over access to railway stations or depots, or docks of (now) Associated British Ports.

Section 175B Adverse possession claims in relation to Thames

A new section 175B is included to address specifically the position following the recent case of *The Port of London Authority v Mendoza* [2017] UKUT 0146 (TCC) and to apply to those parts of the Thames owned by the Port Authority the same regime as applies to those parts owned by the Crown, so that paragraph 11 of Schedule 1 to the Limitation Act 1980 (which allows the Crown to

recover the foreshore within 60 years of any action accruing) applies. It would seem desirable to apply a standard arrangement to the position relating to adverse possession of land forming the bed of the Thames and the Port Authority therefore seeks to apply the current approach in this matter.

Subsection (2) does make it clear however that this will not apply retrospectively, so that the 60 year limitation on actions to recover the bed of the Thames will not apply to a right of action which has occurred more than 12 years before the date of the Order coming into force.

Section 177 Removal of vehicles at port premises

Section 177 which deals with the removal of vehicles from port premises has been replaced by a new section extending the provisions.

Subsection (1)(a) sets out situations in which the Port Authority may remove a vehicle to a place of safe custody at the owner's risk. A new subsection (1)(a)(iii) provides for a parking prohibition notice to be left on a vehicle and for that vehicle to be removed after the expiry of a period of 24 hours from when the notice was left on the vehicle. Subsection (1)(a)(iv) is the former subsection (iii) amended to include situations where the Port Authority considers a vehicle has been left in an unsafe place and situations where it considers the vehicle poses an obstruction or a security risk. A new subsection (1)(b) has been added to allow the Port Authority to remove a vehicle which it considers to have been abandoned on port premises. The problem the Port Authority has encountered is parked vehicles and wrecked vehicles being left on its private accessways particularly to radar sites, which are also used by the emergency services, and on draw docks, which give the public vessel access to the Thames.

Subsection (2) has been amended to make reference to the person responsible for the vehicle rather than the registered owner. A definition of 'person responsible' is then added as a new subsection (3). This definition is based on one previously used in the Cowes Harbour Revision Order 2012. The amendments made to subsection (4) are also based on wording included in the Cowes HRO, as is the new subsection (6) which requires notices to be displayed at entrances to parking places.

A new subsection (5) has been added to deal with a situation where the Port Authority considers that the vehicle is in such a condition that it ought to be destroyed. The Port Authority is then required to notify the keeper of the vehicle that if it is not collected then they propose to destroy it and the keeper will be responsible for the expenses of destruction.

New sections (7) and (8) have been added and are based on section 4 of the Refuse Disposal (Amenity) Act 1978. They give the Port Authority the power to dispose of vehicles removed under this section, including power to provide plant and apparatus for doing so. The new subsection (9)

clarifies that the costs recoverable by the Port Authority include the costs of employing contractors, the removal and storage of the vehicle and the expenses of disposal. The new subsections (10) and (11) are also based on section 4 of the Refuse Disposal (Amenity) Act 1978 and deal with situations in which the keeper of the vehicle claims the vehicle.

New subsection (12) again is based on the Cowes Harbour Revision Order and defines references to the keeper of the vehicle.

Finally, a new subsection 13 introduces a definition of 'vehicle' for this section only. It is defined by reference to s.99 of the Road Traffic Regulation Act 1984.

Section 179 Millwall docks: exemption from London Building Acts

This section is to be repealed as it relates solely to the Port Authority's buildings in the docks which have now all been sold.

Section 180 Obligations as to bridges, lights, roads, etc.

As regards section 180 and Schedule 7, which relate to obligations on the Port Authority regarding bridges, lights and roads, these are to be repealed. Many of the relevant obligations have now been released, but all the remainder relate to docks and land which the Port Authority has disposed of and no longer has an interest in. It no longer has the necessary rights to comply with the various obligations set out in Schedule 7 and the ownership and responsibility for the works has passed to its successors in title to the land. The sale was by transfer not a vesting order.

Section 181 Access for government officers

As elsewhere, references to the Board of Trade have been updated to refer to the Minister (defined as the Secretary of State for Transport). The section has also been amended to update it with a reference to the Revenue and Customs.

Section 183 Authentication of Port Authority's documents

Subsection (1) has been amended to make it clear that a permission under the new Part V regime is covered by these provisions regarding authentication of documents. It is also amended to extend the scope of who is entitled to authenticate the Port Authority's documents to cover an officer authorised by the Port Authority and not just the secretary.

The reference in (2) to the management of the business at a dock has been deleted as the Port

Authority has ceased to own any docks.

Section 184 Service of documents

This has been widened to allow for electronic communication. Additionally, subsections (1)(b) and (3)(b) have been updated to cover Limited Liability Partnerships.

Section 185 Port Authority's publications

As mentioned above, as the Port Authority has no head office, the references in paragraphs (a) and (b) of section 185 have been replaced with references to "principal office".

This section, which relates to any obligations the Port Authority has to publish a document, has been amended so that it provides for electronic publication. As in the case of the Port Authority's byelaws, it may choose not to charge for hard copies of its publications (especially as copies are available free of charge on the Port Authority website) and for this reason the words "if demanded" have been added to the end of paragraph (b).

Section 186 Crown Rights

The reference to the Port of London (Consolidation) Act 1920 has been replaced with a reference to land in which there is an interest belonging to a government department (or in trust by Her Majesty for a government department; Her Majesty in right of the Crown or in right of the Duchy of Lancaster or the Duchy of Cornwall and so held since 1856. The reference to an existing interest of a government department makes it easier to identify what land this provision relates to.

Section 187 Certain powers not exercisable in Medway approach area and areas off Southend-on-Sea and Sheerness

In subsection (1)(a), a new proviso has been added to clarify that the restriction set out in the first column of Schedule 8 in relation to laying down moorings does not apply when the Port Authority is laying them in the carrying out of the functions as a local lighthouse authority. This is to ensure that the Port Authority is able to discharge the responsibilities as a local lighthouse authority which were conferred on it by the Merchant Shipping Act 1995 and to comply with directions given by the general lighthouse authority under section 199 (Control of local lighthouse authorities),

The reference in (1)(b) to Southend Corporation has been changed to Southend-on-Sea Borough

Council. The Urban district council of Sheerness is now part of Swale Borough Council. The reference in subsection (1)(b) to the area described in paragraph 2(b) in the second column of Schedule 8 has been removed because that paragraph has been repealed in the Schedule. That repeal is explained in the section of this note on Schedule 8.

Subsection (2) is repealed because it repealed section 47 of the Southend-on-Sea Corporation Act 1947 and this repeal has now had effect meaning this provision is spent.

Section 189 Saving for the East London railway tunnel

The reference to the London Transport Board has been deleted because the tunnel is now vested in Rail for London Limited. There is no need to name the current owner in order to identify the tunnel to which this section relates. The heading of the section has been updated to reflect this.

Subsection (3) is repealed because the Port Authority no longer owns the Eastern and London Docks.

Section 192 Saving for rights, etc, of Temples

The reference to Part VI (Prevention of pollution) which has been repealed is deleted.

Section 193 For protection of the Essex County Council

Subsection (2) has been repealed because it is redundant as it refers to section 46 (Refuse dumps) of the Essex County Council (Canvey Island Approaches, etc.) Act 1967 which has been repealed.

In subsection (4) there are several minor amendments consequential on the amendments made in Part V of the Act.

Section 195 For protection of Statutory undertakers

This section contains protective provisions for the benefit of statutory undertakers.

There are several minor amendments consequential on the amendments made in Part V of the Act.

Subsection (3)(a) has been amended to allow the Port Authority to extend the circumstances in which it can give directions to statutory undertakers regarding the construction, alteration, replacement or renewal of their apparatus to include directions for the conservancy of the

Thames or to enable the construction of works in the Thames. Unlike the Water Industry Act 1991 the Electricity Act 1989 does not include a saving for harbour authorities in relation to the exercise of the undertaker's powers and the Port Authority needs to ensure that unfettered use of statutory undertakers' powers does not prevent appropriate river development.

The new paragraph 4A spells out that in addition to directions given under subsection (3)(a), the Port Authority may also require apparatus which has been constructed, placed, altered, renewed, maintained or retained under subsection 3(a) to be relocated. As this is to be at the expense of the Port Authority, it is a power that the Port Authority are likely to use carefully.

Section 196 Application of Merchant Shipping Act 1894 to local lights

The Port Authority is now a local lighthouse authority under the Merchant Shipping Act 1995 so this section is redundant and is to be repealed.

Section 197 For protection of the Metropolitan Water Board

This section contains protections for the benefit of the Metropolitan Water Board (and its successors). There are several minor amendments consequential on the amendments made in Part V of the Act.

There is an added requirement for any body to which the exemption from the Port Authority's permitting regime in this section applies to give six weeks' notice to the Port Authority of its intention to carry out works. This is to enable the Port Authority to assess the proposals and make any necessary plans to abate any nuisance or mitigate any interference with the navigation or conservancy arising from the works and their subsequent use.

(b) Offences

Section 199 Traffic offences on dock road

This section has been repealed because the Port Authority no longer has any dock roads. Although the Port Authority does still operate a wharf, it is considered that these detailed provisions are disproportionate for such a small area.

Section 200 Prohibition on pollution, etc, of Thames and docks

Section 200, which gives the Port Authority powers in relation to pollution, is extended by the insertion into subsection (1) of wording to include the passing of liquids and other poisonous,

noxious or waste matter into the river within the offence created. This is in line with other harbour authority powers such as section 25 of the Harwich Harbour Act 1974. The wording also now clarifies that solid matter does include matters in suspension.

Subsection (5) is extended to include provisions to allow the Port Authority to recover as a debt the costs of removal and remediation or mitigation of damage or pollution caused from the person committing the offence, in line with the principle that ‘the polluter pays’. The wording of subsection (5) also makes clear that the pollution might not be directly caused and could result from a chain reaction.

Section 202 Obstructing bridges

This section has been amended slightly to reflect the fact that although the Port Authority does not currently own any such bridges, there are bridges over creeks. The reference to “within the limits” ensures that these are covered by the section.

Section 204 Offence of bribery, etc

This section is to be repealed as the Port Authority is now subject to the Bribery Act 2010.

(c) Legal proceedings

Section 205 Institution and defence of proceedings

Section 205 gives details about the institution and defence of proceedings by the Port Authority. A reference to the secretary of the Port Authority has been added to subsection (2) so that it is consistent with subsection (1).

Section 207 Jurisdiction of justices

Subsection (1)(c) has been amended so that the distance is given in metric.

PART XIV

SUPPLEMENTARY

Section 209 Saving for section 68 of the Port of London (Consolidation) Act 1920

This is a saving which is to be repealed along with Schedule 10. It relates to the free water

clause within the docks and the docks no longer belong to the Port Authority. For this reason, the Port Authority no longer charges rates in relation to the use of docks, thus making this exemption redundant.

Section 210A Further amendment of the Port of London and Midland Railway Act 1922

This new section relates to the jetty, or landing stage, constructed under the Port of London and Midland Railway Act 1922. The jetty was split into two parts with part owned by the Port Authority and part by the Railway Company. The Port Authority's part was transferred to the Port of Tilbury, which now also owns and operates the part previously owned by the Railway Company.

This new section provides for the further amendment of the Port of London and Midland Railway Act 1922. Subsections (1) and (2) ensure that it is the Port Authority, rather than any other body, which has the benefit of and power to enforce the navigation protective provisions in the 1922 Act set out in subsection (2).

Subsections (3) and (4) ensure that the sections set out in subsection (3) apply to any person owning, operating or occupying the Company's part of the landing stage, not merely a statutory successor to the Railway Company. The introduction of this protection for the Port Authority relates to concerns the Authority has about potential future use of the landing stage.

Subsection (5) makes clear that the provisions of the London and Midland Railway Act 1922 do not operate to remove the requirement to obtain a works permission under Part V of this Act if the Company's portion of the landing stage ceases to be used primarily for ferry services between Tilbury and Gravesend, the original use for which the work was authorised.

Section 215 Inquiries by the Minister

As elsewhere, this section has been amended to update references to the Board of Trade to the references to the Minister defined as the Secretary of State for Transport.

SCHEDULES

SCHEDULE 1

DESCRIPTION OF PORT LIMITS

The definitions of "the landward limit" and "the seaward limit" have been updated with values of latitude and longitude for greater certainty in determining the limits. Additionally, paragraphs 1 and 2 have been amended to extend limits described up to mean high water springs level. This extension relates to the limits of jurisdiction only, not the property rights in the land. The change

will bring the limits in line with the marine licencing area of jurisdiction which would remove the potentially difficult situation of a slightly different area being relevant for works permissions and for marine licences. Additionally, the Port Authority considers it desirable that all areas which could be at any stage covered by water should be subject to their regulation. Additionally, the definition of 'the former seaward limit' has been moved from here to section 2 to reflect the fact that it is not the current Port limit as is being described in that Schedule.

In paragraph 2 of Schedule 1 to the Act, in the description of the port limits the insertion of the words "(whether or not belonging to or administered by the Port Authority)" is intended to make clear that the docks on the Thames are still included within the Port Authority's limits even though they are no longer owned by the Port Authority for the purposes of various enforcement powers under the Act, such as the power to enter on to vessels under section 38 to assess charges and for the purposes set out in section 137.

Paragraph 2 has been amended to clarify what is included in the Port Authority's limits. The positions regarding the tidal River Brent and Chelsea Creek have been clarified. A number of docks, piers and jetties which have been demolished or are no longer accessible from the Thames have been removed from the limits to reflect the current position.

In keeping with general practice, the distance has been updated to metric.

Transitional provisions have been included in the Order to avoid the need for owners of existing works which will now be within the port limits to apply for a works permission. The holder of a works licence for an existing work which is partially located in the added area is not required to apply for a new works permission in relation to that part of the work. Similarly, the owner of an existing work located wholly in or landward of the added area is not required to apply for a works permission.

SCHEDULE 2

PART I

Provisions relating to members of the Port Authority

Paragraph 2(1) has been amended so that although the provision states that the appointment is to be for three years, its starting date is no longer defined and it will be subject to the provisions of sub-paragraph (12) which deals with a casual vacancy.

The requirements in paragraph 4 have been widened so that they are no longer limited to the list shown. As well as wide experience, special knowledge or ability appropriate to the requirements of the Port Authority's statutory functions will be required.

Paragraph 6(1) has been amended to deal with the potential situation in which an officer of the

Port Authority might change his or her role and should no longer be sitting on the Board. The words “or ceases to hold the executive position held by him at the time of his appointment” has been inserted to clarify that a member will cease to be a member of the Board at the time that they cease to hold the executive positions that they held when they were appointed.

A new paragraph 8(3) has been added. It addresses the situation in which the Secretary of State chooses to appoint as chairman a member that the Port Authority had previously appointed to the Board. In this situation the member will no longer be treated as having been appointed as a member by the Port Authority. The effect of this is that his appointment does not reduce the number of members that the Port Authority can appoint which is already limited to three under paragraph 1B of the Schedule.

At paragraph 11 additions have been made to the list of reasons for declaring a termination and vacancy. Additionally, provision has been made for suspension which might arise if an accusation is made but not proven, or a member is sick.

Paragraph 12 has been amended to ensure consistency with paragraph 11.

Part II

PROCEEDINGS

Paragraph 2 has been amended to confirm that, among other situations, the validity of the proceedings of the Port Authority is not to be affected by the fact that any member was disqualified from acting on grounds of interest or had ceased to hold office. This provision is contained in the legislation of other harbour authorities.

A new paragraph 3A has been added widening the way Board and committee meetings may be conducted and votes taken, to include members who are only present through electronic means.

A new paragraph 4A has been inserted to enable delegations by sub-committees to a sub-committee or an officer, other than those which under the Harbours Act 1964 it is not possible to delegate.

A new provision paragraph 5A has been added confirming that the validity of committee proceedings are not affected by any vacancy among the members of the committee or any defect in the appointment of a member or a member taking part being disqualified from acting.

There are minor amendments to paragraph 6 to clarify that it also applies to sub-committees.

A new paragraph 6A has been added to state that the regulation of the Port Authority is to be in such manner as the Port Authority decides.

Schedule 4

Licensing Appeals to the Minister

Schedule 4 has been entirely replaced with a new appeals procedure to cover appeals to the Minister made under sections 11, 69 and 126. The new procedure is based on provisions that have been included elsewhere in legislation, for example in the High Speed (London – West Midlands) Act 2017. The process is a written representations procedure with notices or representations to be served electronically unless it is agreed that postal service is permissible.

Schedule 7

Maintenance Operation and Lighting of Bridges, Footways and other works

The repeal of Schedule 7 alongside section 180 is included in the explanation of that section.

Schedule 8

Paragraph (1)(c) in column 2 has been updated to reflect the fact that the urban district of Sheerness is now part of the district of Swale.

Paragraph (2) of this Schedule which disapplies the powers of the Port Authority to regulate the Port with the Medway Approach area and off Southend-on-Sea and Sheerness has been repealed. This is because it is inconsistent with the responsibilities which the Port Authority has as a local lighthouse authority under the Merchant Shipping Act 1995, as explained in relation to Section 187

Schedule 10

The repeal of Schedule 10, alongside section 209 is included in the explanation of that section.

SCHEDULE 11

Transitional provisions

As elsewhere, the reference to the Board of Trade in paragraph (i) has been updated to refer to the Minister (defined as the Secretary of State for Transport). Subsection (k) has a minor amendment consequential on the updating of the property licence and works permission regime as explained under Part V of this note.

PART 3 OF THE ORDER

Modifications to local legislation

As explained above the Port Authority has responsibilities as a local lighthouse authority in relation to the whole of its area. That makes it necessary both to remove the disapplications of its powers in Schedule 8 to Port of London Act 1968, and to modify other local legislation which confers overlapping powers on other authorities within its area so as to ensure that the Port Authority's ability to exercise its own powers is not compromised. Part 3 of the Order accordingly modifies provisions of the Medway Ports Authority Act 1973, the County of Kent Act 1981 and the Essex Act 1987.

Modifications of the Medway Ports Authority Act 1973

Consequential changes are made in this Act to address the fact that both the Port Authority and the harbour authority for the Medway (the Port of Sheerness Ltd) will have regulatory powers within the approaches to the latter's harbour area.

Section 85 (For the mutual protection of Authority and Port of London Authority) of the Medway Ports Authority Act 1973 is modified to insert three new paragraphs in subsection (2). This subsection deals with situations where a dispute or difference might arise between the powers of the Port of London Authority and those of the port authority for the Medway area, currently Port of Sheerness Limited. The new paragraphs added by the HRO deal with three potential conflicts between powers.

New paragraph (ca) covers the Port of London Authority's power to lay down or place buoys either under s.62 of the 1968 Act or under s.201 (Powers of harbour authorities) of the Merchant Shipping Act 1995. New paragraph (cb) covers the Port of London Authority's power to make byelaws for the regulation of the Thames and its navigation and the lights to be exhibited by vessels under section 162 of the 1968 Act. Finally, new paragraph (cc) covers the Port of London Authority's power to make special directions and the harbour master's power to make special directions. Each paragraph relates specifically to the exercise of these powers in the Medway approach area.

Each of these paragraphs has been introduced because of the repeal of paragraph 2 in each column of Schedule 8. Previously these paragraphs had excluded the use by the Port of London Authority of these powers in the Medway approach area, therefore their powers could not previously conflict with those of the relevant port authority in Medway.

Modifications to the County of Kent Act 1981

The Changes to this Act contain savings for the Port Authority in respect of the regulating powers

of the relevant local authorities.

The first modification of the County of Kent Act 1981 is the insert of a new subsection (10) into section 33 (Touting, hawking, photographing etc.). Section 33 empowers a district council to designate certain places such that certain of the activities listed in subsection (2) cannot be done there without the district council's consent. The new subsection (10) states that the powers in this section cannot be used by a district council to so designate any land owned by or vested in the Port Authority. Additionally, if any seashore within the limits of the Port of London is proposed to be designated, the district council must first consult with the Port Authority even if the land is not owned by or vested in them.

The second modification to the County of Kent Act is the insertion of a new subsection (2) in section 85 (Extension of section 268 of Act of 1936 to houseboats). Section 85 extends the application of section 268 of the Public Health Act 1936 to cover houseboats. In turn, section 268 of the Public Health Act 1936 provides for local authorities to be able to make byelaws in relation to the cleanliness of a number of types of structure. The new subsection (2) states that if the district council makes, amends or revokes byelaws which by virtue of section 85 apply to houseboats, it must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.

Modifications to the Essex Act 1987

As with the modifications of the County of Kent Act this Act is modified to include savings for the Port Authority's powers.

The first set of modifications to the Essex Act 1987 is to section 11 (Touting, hawking, photographing etc.). This section empowers a district council designate certain places such that certain of the activities listed in subsection (2) cannot be done there without the district council's consent. The Order would insert text into subsection (6)(a) such that a district council is required to notify the Port Authority where a designation would affect the seashore within the limits of the Port Authority. The Order also inserts a new subsection (9A) requires the district council to consult the Port Authority before giving consent under section 11 to the hawking, selling or offering or exposing for sale anything on the seashore. Finally, a new subsection (11) states that no part of the seashore which is owned by the port authority is to be designated without the prior agreement of the Port Authority.

Section 30 (Unauthorised structures on seashore) of the 1987 Act provides the district council with powers to regulate the placing of certain structures on the seahorse. The Order would omit the words "which is vested in or under the control of the port authority" from subsection (5). The effect of this is that nothing in section 30 will affect any part of the seashore which is in the limits

of the Port of London. The Order would also add a new subsection (6) which requires the district council to consult the Port Authority before consenting to any structures being placed within the area included in paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act.

Section 31 (Byelaws as to boats) of the 1987 Act extends the powers from section 76 of the Public Health Act 1936 to enable a district council to make byelaws to regulate boats in particular ways. The Order would omit the words “which is vested in or under the control of the port authority” from subsection (2)(c)(iv). The effect of this is that no byelaw made under section 31 will have effect in relation to any part of the seashore which is in the limits of the Port of London. The Order would also add a new subsection (4) before making, amending or revoking byelaws in relation to the area included in paragraphs (1)(a) and (1)(b) of column 2 of Schedule 8 to the 1968 Act a district council must first notify the Port Authority and provide them with a draft of their proposal. It must also consider any written representations of the Port Authority within two months of receiving them.

The Order would modify subsection 2 of section 57 (Interpretation of Head B of Part XI.). This subsection deals with the interpretation of the term “piers” and lists sections of the 1987 Act for which “piers” is to include the wharf in Leigh-on-Sea known as Bell Wharf. The Order would add section 76 (For the Protection of the Port of London Authority) to that list such that Bell Wharf, which is within the limits of the Port of London, is included in the area over which the Port Authority enjoys protections under section 76.

Section 66 (Pier byelaws) empowers Southend Council to make byelaws for certain purposes in relation to piers. The Order would insert wording into subsection (1) to require consultation with the Port Authority, and the taking into account of any representations made by them, before the making of such byelaws.

Section 71 (Provision against danger to navigation) requires Southend Council to notify Trinity House of any injury to or destruction or decay of a tidal work. The Order would amend this such that the notification needs to be to the Port Authority. Section 74 (Permanent lights on works) requires Southend Council to put such lights on its piers or take such other steps for the prevention of danger to navigation as Trinity House directs. Again, the Order would amend this to make the relevant body the Port Authority. The Order would then make corresponding amendments to section 75 (Provisions applicable to sections 70 to 74) to remove references to Trinity House.

Section 83 empowers Southend Council to erect and maintain groynes on any part of the foreshore vested in them or on any other part of the foreshore with consent. The Order would insert wording to require consultation with, and the taking account of any representations from, the Port authority before the construction of such groynes.