

HARBOUR REVISION ORDER – PORT OF LONDON ACT 1968

FREQUENTLY ASKED QUESTIONS

April 2020

As a result of the informal consultation process, the Harbour Revision Order (HRO) has been amended where possible by the Port of London Authority (PLA) to take account of the consultation responses. If you responded to us during the process, we will send a copy of the amended HRO to you for your information; as an alternative it will also be published on the PLA's website.

In addition, following the informal consultation process, we noted that certain questions were commonly raised regarding the HRO. As such, we thought it would be helpful to publish a set of the more frequently asked questions, together with our responses.

Please note that these responses are drafted in line with the HRO as amended as a result of the informal consultation.

Definitions

Mean High Water Springs

Q: Why have you added a new definition of “high water level”, defined as meaning mean high water springs?

A: This new definition informs the definition of “port limits”, as revised and set out at Schedule 1. Schedule 1 is to be revised so as to clarify using modern terminology the extent of the PLA's legal jurisdiction. It is correct to say that using the new definition of “high water level” will extend the PLA's statutory jurisdiction in certain locations and in respect of certain powers and duties, in particular in relation to the licensing of works.

The intention is to bring the PLA's jurisdiction into line with the Marine Management Organisation's jurisdiction, which has the benefit of ensuring consistency and certainty for the PLA's stakeholders.

For the avoidance of doubt, the new definition does not increase the extent of the PLA's land holdings i.e. these will remain as previously.

Section 11 – Powers relating to land

Q: Does the revised drafting at section 11 alter my ability to place works in the river?

A: In essence, no. Previously the grant of a works licence under section 66 conferred, as well as statutory authorisation for the works, a deemed property right to place and retain works on the

riverbed. The new permitting regime for works (and for moorings) at section 66 will not grant any property right and it is accordingly necessary for the works owner to obtain a separate right under section 11.

You will need to apply for a property licence to place works on PLA land and, in considering a request for such a licence, where such property licence is required in addition to a works or mooring permission, the PLA is under similar constraints as it was previously in relation to the grant of a works licence. First, subsections (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. Second, subsections (3D) to (3F) give a right of appeal to the Secretary of State in the event that an applicant is aggrieved regarding a refusal to grant the requisite property right or regarding the conditions upon which the right is proposed to be granted - on the grounds that the refusal is or the conditions are unreasonable (as applicable).

It should be noted that there is no proposal to alter the PLA's charging mechanism in respect of property rights.

Q: In light of the HRO, will I have to pay more to place works on the PLA's land?

A: Consideration in respect of works on the PLA's riverbed will continue to reflect the use of the riverbed and property values from time to time. The way the consideration is calculated will not change nor will the right to appeal, both in respect of the terms of a proprietary licence and in respect of the consideration.

Section 21 – Power to make certain charges

Q: The proposed change to this section suggests you are going to charge for goods carried from one terminal to another. Is that correct?

A: Under the Harbours Act 1964 (S26) the PLA already has the ability to charge in respect of goods being moved within harbour limits but to date we have chosen not to do this, save in respect of specific projects. However we may wish to levy this charge in the future since intra-port freight makes the river busier and adds to the PLA's costs in ensuring navigational safety. The amendment to this section clarifies the PLA's ability to do so. The PLA consults annually on its proposed future charges.

Section 30 – Exemption from port rates for goods in transit

Q: In this section you have removed the exemption for goods in transit. Do you plan to charge for this?

A: The PLA proposes to remove a number of historic exemptions from the Act which are not suitable for a modern port and/or a body seeking to charge its customers on a fair basis. In the future if the Thames became a major shipping hub for goods in transit then this would increase the costs of managing the river safely. We may therefore look to recover these costs by introducing new charges. As above, the PLA consults annually on its proposed future charges.

S39 (Recovery and enforcement of charges and consideration)

Q: If the PLA seizes my vessel whilst it is moored at river works, pursuant to its powers to enforce charges and/or consideration in respect of those works, what can I do?

A: So long as you are not the owner of the works in respect of which charges and/or consideration are owing, you can claim the return of your vessel. You should provide evidence of your ownership of the vessel to the PLA and it will be returned to you without charge.

In the event that the PLA intended to sell the vessel, it would first be required to serve notice upon you of this fact, and you would then have 90 days in which to make your claim.

Section 63 – Removal of private moorings

Q: Does this proposal remove my right to retain a pre 1857 mooring chain in the river?

A: It does not. Previously mooring chains in existence prior to 1857 were exempt from licensing pursuant to section 66. These mooring chains still required property rights to be in place in the river of course.

The intention now is simply to require the owners of the relevant mooring chains to register them with the PLA. The registration application will require proof on a balance of probabilities that a chain dates from before 29th September 1857, that the mooring has been in use from time to time on a more than occasional basis over a twenty year period, and that the owner of the chain has the requisite property right to use the chain. We believe this is appropriate in order to further safe and sustainable use of the river as it develops and grows in the twenty first century. We also believe that it is important from a safety perspective that the location of such chains is established.

Upon successful registration, a works permission will be granted to the applicant at no cost. There will be a right of appeal to the Secretary of State in relation to a refusal to register the mooring chain (or concerning the conditions of the works permission following registration), provided that an application is made to register the chain within the defined period (three years from the commencement of the HRO).

Section 66 – Permitting of works

Q: In light of the HRO, do I need to take any action in respect of works previously licensed under section 66?

A: No. The proposed amendments to the relevant sections will have no effect on existing works licences.

However, should you want to place new works in the river in the future then you will have to apply for a permission under the new regime for those works.

Section 66A – Permitting of Mooring

Q: Will I require a mooring permission in respect of a vessel moored at works consented by an existing works licence?

A: No. So long as the existing works licence grants permission for mooring(s) at the relevant works, and so long as you are complying with the terms of the licence, no further action needs to be taken by you when the HRO comes into force.

For the avoidance of doubt, the new mooring permission will apply only in respect of single vessels mooring in the river.

Section 84 – Replacement of marked landing places

Q: Will the changes proposed to this section have any impact on existing public or existing private rights of way?

A: No, existing public rights of way and existing private rights of way will not be affected by the HRO.

Q: Will it be the case that the PLA can remove or close the public use of a landing place without a requirement to provide an equally convenient public landing place?

A: No. As a result of the informal consultation, it has been decided that any removal or closure of public landing spaces shall require the PLA to provide an equally convenient free public landing place. However, it may be the case that the PLA needs to partially close public landing spaces, for example for health and safety purposes. If so, such partial closure shall only take place if in the PLA's reasonable opinion the remaining part of the landing place is adequate for public use.

Section 90 – Entry on land to survey, etc

Q: Should the PLA be permitted to enter dwellings using this power?

A: This is an existing power but one that is being varied. However, as a result of the informal consultation, the PLA has noted various opinions on this issue and proposes that the power should not be exercisable in respect of dwellings (excluding common parts).

S137 (Powers of inspection of works and vessels)

Q: Could the PLA enter onto my houseboat under this power?

A: The PLA cannot enter into any interior part of a houseboat being used for residential purposes save in the case of an emergency or to prevent or extinguish a fire. The PLA can otherwise enter onto an exterior part or a part of a vessel not being used for residential purposes in the furtherance of the statutory purposes set out in this section.

S138A (Power to require information in relation to the investigation of a navigational incident)

Q: How would the PLA intend to use this power?

A: The PLA has as a result of the informal consultation removed this power from the HRO.

Section 175A – Rights of way over permitted works and land of Port Authority

Q: Will this proposed section affect existing rights of way?

A: No. Existing rights of way will remain unaffected. The intention here is only to prevent rights of way being acquired in future by long usage over licensed works or approaches to them. The creation of rights of way could pose a danger to navigation.

Section 184 – Service of documents

Q: How will a document be validly served upon me if I don't have electronic means to receive the notice?

A: This section provides that the PLA can deliver a document using various methods, including: personal delivery, leaving the document at the proper address, post, or electronic means. The inclusion of electronic means is intended to reflect technological advances since the original drafting of this section. Service will not be effected using electronic means unless you agree and have provided an electronic address.