



HARBOUR REVISION ORDER – PORT OF LONDON ACT 1968 A SIMPLE GUIDE – INITIAL CONSULTATION

OCTOBER 2019



About the Port of London Authority

At the Port of London Authority (PLA) we are the Custodians of the Tidal Thames, holding the river in trust, working to hand it on in a better condition to future generations. Realising the goals of the Thames Vision to see greater use made of the river and improving its environment, is a major focus for the organisation.

Our operations cover 95 miles (150 kilometres) of the tidal river, from Teddington Lock to the North Sea. As statutory harbour and pilotage authority, much of our work is centred on keeping river users safe.

The PLA is committed to safe and sustainable growth on the Thames. Terminals on the river make up the UK's second biggest port, handling in excess of 50 million tonnes of cargo a year. The river is the UK's busiest inland waterway, with trips taken by some 10 million passengers a year and five million tonnes of freight moved between terminals. As a vibrant centre for sport and recreation, the Thames is home to activities including rowing, kayaking and sailing, and millions more enjoy the Thames Path and other activities alongside the river.

The Thames Vision, launched in mid-2016 features six goals aimed at increasing use of the river for freight, travel and sport, alongside an improving environment and greater

embedding of the Thames in the cultural life of the city. The long term Vision forecast is that the Thames could be handling as much as 80 million tonnes of cargo a year by 2035.

The first Thames Vision Progress Report, published in October 2018, showed solid progress across the majority of the six goals, with more work to be done to advance the ambitions for passenger travel and sport/recreation.

The ambitions of the Vision cannot be delivered by the PLA alone – its success will draw deeply on the engagement and support of myriad stakeholders. Where there are opportunities for the PLA to intervene and make investments to unlock potential for greater river use, it is now doing so through an Investment Plan. Projects to benefit so far include: the acquisition of wharves for reactivation as cargo handling centres; support for habitat improvement programmes; and a grants programme to increase sports participation on the river.

The Air Quality Strategy for the tidal Thames features 18 actions, including air quality monitoring, fuel trials and organising an EXPO to accelerate the adoption of cleaner propulsion technologies on the Thames. We were the first UK port to introduce reductions in charges for visits by cleaner vessels.

For further information

The Thames Vision: <http://www.pla.co.uk/assets/thevisionforthetidalthames.pdf>

Thames Vision Progress Report: <https://www.pla.co.uk/assets/visionprogress22018web.pdf>

PLA Investment Plan: <https://server1.pla.co.uk/assets/plainvestmentplan2018.pdf>

Air Quality Strategy: <http://www.pla.co.uk/environment/Air-Quality-and-Green-Tariff/Air-Quality>

What are we doing and why?

The PLA was created by an Act of Parliament passed in 1908. The current act governing the PLA is the Port of London Act 1968, which itself was last substantially updated in 1992, when the last of our cargo handling operations – the Port of Tilbury – was privatised.

Since then a number of one-off amendments have been made. We have now reached the point where a more thorough overhaul is needed to ensure our statutory powers and duties are appropriate to meet the requirements of the 21st Century, as river use grows and evolves.

The purpose of the Harbour Revision Order is therefore to modernise the Act to reflect the operations on the river, and technology in use, today. This is in line with our broader evolution as an organisation, adopting open communications and greater transparency about our operations and decision making, including regular public meetings along the river.

Underlying principles

In preparing this Harbour Revision Order, we have centred our work around four principles:

- safety is the prime consideration;
- charges should be fair;
- ability to pay should be considered; and
- ensuring the functions of statutory consenting and fee consideration are separate.

What's involved?

The powers of a Statutory Harbour Authority like the PLA are granted by statute. The formal process of amending those powers requires the grant of a Harbour Revision Order (HRO). The Marine Management Organisation (MMO) oversees the HRO application process for statutory harbour authorities in England.

Early stakeholder input

Before formally applying to the MMO with our HRO, we are taking six weeks to seek early stakeholder input on the changes that we are proposing to make.

The elements of this period include:

- Release of the draft HRO online (www.pla.co.uk/About-Us/Other-Consultations)
- Publication of this simple guide to the HRO
- An open house session where we will welcome stakeholders to discuss the changes

Any comments on the proposed Revision Order should be sent by:

- email to HRO@pla.co.uk; or
- post to HRO Admin, Port of London Authority, London River House, Royal Pier Road, Gravesend, Kent, DA12 2BG.

The closing date for early stakeholder input is Thursday, 5 December 2019 and there will be further opportunities to participate in the process.

What major changes are we seeking?

Remove exemptions from charges – Sections 27, 29, 30 and 33

Background: the PLA is a self-financing, statutory authority. We levy charges to pay for the statutory services that we provide and to have sufficient cash to invest in the assets required to operate effectively. Charges are reviewed annually and involve consultation with customers; customers' responses are considered by the Board before changes to charges are confirmed. As a principle, the PLA will look to encourage growth in river use and will align its charges to encourage achievement of the goals set out in the Thames Vision. Any agreed exemptions will in future be set out in the Charges Schedule.

Reason for change: we are proposing to remove a number of exemptions from charges which are historic in nature, no longer apply or do not reflect the busier river that we now manage. It is not usual practice to enshrine a charging principle into legislation. When these exemptions were introduced in the early years of the Twentieth Century, the Port of London was a very different entity.

The charges involved are:

Section 27. exemption from charges at Richmond Lock & Slipway. These are obsolete exemptions relating to trading barges and it is the case that no freight currently, or has for many years, transited through the Lock. This is an historic provision which is being removed as it is no longer relevant.

Section 29. exemption from port rates for bunker fuel and fish. Bunker fuel has been excluded from the definition of goods, consequently the exemption is no longer needed. The historic provision relating to the landing of fish from the open sea within the Port of London is no longer relevant.

Section 30. exemption from port rates for goods in transit. Most other European ports charge for goods in transit. As the Thames gets busier, it puts a greater emphasis on managing vessel movements to ensure navigational safety; the additional costs of these operations may need to be recovered in the future if this activity develops and terminals take on a greater role as transshipment hubs, feeding other ports in the UK and abroad.

Section 33. exemption from river duties of tonnage. This historic provision applied to smaller vessels which no longer exist, consequently it is being repealed.

What these changes mean:

For the PLA: this gives the PLA flexibility to repeal historic exemptions from charges and deal with them via the Charges Schedule. The change makes the PLA Act consistent with the Harbours Act, which already provides the PLA with the ability to charge.

For stakeholders: the PLA consults annually on proposed changes to charges, as set out in the background section above. Customers will have the ability to comment on proposals through the consultation.

Borrowing Powers – Section 48

Background: the Act grants the PLA powers to borrow in line with its principal mandates around improving the tidal Thames, facilitating safe navigation, protecting the marine environment and promoting use of the river. Currently the provision is drafted in terms which were relevant when the Act was passed in 1968 (for example the issuing of "port stock"), but which are now in need of modernisation. In addition, Section 48 includes a numerical cap (£200 million) on the PLA's borrowing powers and the approval of a Minister of the Crown in certain cases. Trust Ports such as Harwich Haven Authority have already made this change.

Reason for change: the Authority published an Investment Plan, following consultation with stakeholders, in 2018.

To date, investments have been financed from the PLA's own cash reserves, but we may in the future wish to exercise the right to use borrowing powers in line with practice across other Trust Ports. We are therefore seeking to modernise the wording of this clause and to remove the limits and requirement to seek Ministerial approval which do not apply to other Trust Ports.

What these changes mean:

For the PLA: removal of the requirement for the Secretary of State's approval to borrow, and the limit on the amount that can be borrowed, will give the PLA greater flexibility to invest in line with the goals of the Thames Vision.

The PLA Board will apply the normal checks and balances of corporate governance scrutiny and the banks will ensure that any borrowing is prudent, in line with our statutory purposes and that any lending is based on the ability to repay the money borrowed.

For stakeholders: removing this restriction has potential to increase the pace with which the goals in the stakeholder-shaped Thames Vision are delivered.

Exemptions from works licensing for private ('ancient') moorings – Section 63

Background: the Act provides for moorings placed in the river before 29 September 1857 to not require consent by the PLA under Section 66 of the Act (Licensing of Works), and to be immune to enforcement proceedings under Section 70.

Reason for change: on an increasingly busy river and the busiest freight and passenger waterway in the UK, it is essential for the safe regulation of the port that appropriate control is maintained in relation to moorings and that an appropriate register of all moorings is maintained.

What these changes mean:

For the PLA: a clear view of all structures in the river, enabling more effective safety management.

For stakeholders: the repeal of the exemption will require all owners of moorings claimed under this Section to register them with the PLA and to demonstrate, to the Authority's reasonable satisfaction, that they have been in place since September 1857, and that they have been in use over the last 20 years. There will be a time limit on the registration of any new mooring claim and a right of appeal against any refusal by the PLA to register the claim. Claims of moorings accepted by the PLA will receive, on application, a permission to retain the mooring at nil consideration. As now, any works on these moorings will require the PLA's consent under the provisions of Section 66.

Licensing of works – Section 66

Background: under this Section of the Act there are two distinct grants: 1) the statutory consent to impede the public right of navigation; and 2) the necessary rights to occupy the PLA owned riverbed. Although these two functions have always been dealt with separately by the PLA, their interrelationship is defined within this section of the Act. The opportunity has been taken to transfer the second grant and more particularly the PLA's consent as landowner, to Section 11 of the Act, which deals with the PLA's land.

Reason for change: stakeholders have raised concerns that the statutory function of consenting the works and subsequently setting of the consideration results in a perceived conflict of interest. To rectify this, we are clearly separating the two functions within the Act.

What these changes mean:

For the PLA: this formalises changes already adopted within the PLA under which we have

separated the statutory consenting function; and the property element. The current three-month timescale for determination of the statutory consent will remain; there will be duties on the PLA to undertake public consultation on applications (and to consider all responses received); and to maintain a public register of permissions enshrined within the new Section 66. An important further change is that, in granting the landowner consent/licence under Section 11, the applicant's ability to pay will be considered.

For stakeholders: this change will provide greater clarity around the processes undertaken by the PLA. This is a more transparent and appropriate split between the statutory consenting function and the property element. The existing right of appeal to the Department for Transport will remain and be extended to third party dredging consents (Section 73), with a modernised appeals process. In addition, the enforcement powers in the Act at Section 70 will be modernised to be comparable with those in the Marine and Coastal Access Act 2009.

Permission to Moor – New Section 66A

Background: under the current licensing arrangements in the Act, it is difficult to regulate and control vessels not falling under the requirements of Section 66. This means that there are a number of vessels which should be regulated, but are not.

Reason for change: recent legal judgments made clear that a vessel is not a 'work' and so they will not be protected by the right to interfere with the public right of navigation granted to a work. We are proposing modernising our regime to make it more appropriate and reflect the legal position that vessels aren't works, but should be properly regulated.

What these changes mean:

For the PLA: this change will enable the PLA to ensure improved safety on the busier Thames, as

a number of vessels that are not currently regulated would fall within the scope of regulation.

For stakeholders: this will not affect any vessels already within, or part of licensed river works on the Thames or through other PLA consents. Effectively we are creating a new consent for the future to regulate and control vessels which are not attached to works. Where vessels are moored on PLA owned riverbed, the PLA's permission under Section 11 is also required. Under the revised approach, permanently moored vessels which interfere with the public right of navigation require a permission under this section to impede that public right. Permission under this section will not be required for casual, short term mooring (i.e. persons mooring for no longer than 14 days) and will not apply to those who currently have a right to moor through an existing works licence or other relevant consent from the PLA. It is anticipated that relatively few vessels will need this permission, which is modelled on and comparable to existing consents.

In practical terms this change means that:

1. if you obtain permission for works in future, and want to moor a vessel to them, the permission to moor will be included with the permission for the works.
2. when the PLA lets its own moorings, the agreement to use the moorings will be: the permission to moor; and, if the mooring is on the PLA's land, it will also include a licence to moor on the PLA's land.
3. where a vessel does not use consented works to moor in the river, it will need a permission to moor after 14 days.
4. if the vessel is moored on land not owned by the PLA, a permission to moor will still be required, as well as the land owner's consent.

Times when public use of the Thames may be restricted – Section 91

Background: the Thames is becoming increasingly busy, making it more challenging for harbour masters and harbour launch crews to enforce river closures, traffic controls and impose navigation controls for events and other safety reasons.

Reason for change: occasionally the Authority has to restrict public use of the Thames to ensure that events and other operations can safely be undertaken. Currently the Authority does not have adequately flexible powers to achieve this and minimise the impact on the public. In some cases this has seen vessels ignoring instructions and proceeding, with some hazard, into areas of the river temporarily closed for safety reasons.

What these changes mean:

For the PLA: this change will give the PLA greater powers effectively to enforce river closures, control traffic and impose navigation control. This will ensure that events on the Thames can be delivered in greater safety. Widening the reasons for restricting public access to include any works or operations on or adjacent to the river, and any event or activity taking place on or over the river will assist in preserving safety and security of the public. The revision will add prosecution to the scope of PLA powers to enforce river closures.

For stakeholders: river users and members of the public will benefit from the safer river environment that this change will facilitate.

Power to deal with unserviceable vessels – Section 120A

Background: due to limited statutory powers, the PLA has been unable in some cases to deal with historic issues, including derelict vessels, the location and condition of which are not compatible with a busier river.

Reason for change: currently the Authority does not have adequate powers to deal with unserviceable vessels, particularly those that are not moored in the main navigation channel. This can result in unsafe vessels remaining on the Thames and constituting a potential, but unrealised, hazard to navigation, as well as a negative impact on the amenity of the river.

What these changes mean:

For the PLA: in dealing with unserviceable vessels, the PLA will be granted scope to retain any proceeds of sale to cover costs in clearing/removing a vessel. Where this does not raise sufficient funds to cover costs, the PLA will be able to recover them from the owner.

For stakeholders: reassurance that the PLA will be better able to ensure safety by effectively addressing issues such as the recovery of derelict vessels.

Boarding vessels – Section 137

PLA staff with delegated harbour masters' authority currently have powers to board vessels where necessary. These powers have not previously been available to the Police.

Reason for change: given increasing security concerns, it is necessary to share the PLA's powers to board a vessel with the Police. The PLA board vessels for safety reasons including to inspect them, to take samples and to require the production of documents. The change will extend to the Metropolitan, City of London, Kent and Essex Police.

What these changes mean:

For the PLA: the ability to delegate, when needed, the Authority's powers to board vessels within the Thames.

For stakeholders: reassurance that the Authority's powers can now be appropriately delegated to ensure safety and security concerns on the river are rapidly and effectively addressed.

Identity of master and owner – Section 138

Background: as noted above, PLA staff with delegated harbour masters' authority currently have powers periodically to board vessels where it is necessary. However, they do not have the legal power to request the master, owner or occupier of a vessel to identify the master, owner or occupier of that vessel.

Reason for change: The amendment is made to assist the Port Authority in identifying the master, owner and occupier of a vessel.

What these changes mean:

For the PLA: improved ability to ensure river safety by having the power to require a master to provide his own name and address and that of the owner. The owner will also be required to give the name of any occupier of a vessel.

For stakeholders: reassurance that the Authority has the powers necessary to ensure and enforce safety on the river.

Protection of statutory undertakers – Section 195

Background: statutory undertakers are companies and agencies with legal rights to carry out certain development and highways works. These include utilities, telecoms and infrastructure companies.

Reason for change: this is related to the PLA's functions as a landowner, regulator and promoter of use of the Thames. It extends the circumstances in which the Authority can give directions to statutory undertakers regarding the construction, alteration, replacement or renewal of their apparatus. The change includes scope to give directions for the conservancy of the Thames or to enable the construction of works in the Thames.

This change is being made to protect the PLA's scope to act in the interests of river users and the wider Thames community.

What these changes mean:

For the PLA: powers to require a statutory undertakers' apparatus be moved if needed for the effective operation of the Thames or its general conservancy (for instance to ensure cables or pipes may not be caught in any dredging operations where the bed is eroding).

For stakeholders: for those statutory undertakers, reassurance that such movement would be at the PLA's cost. More generally the Authority having the powers necessary effectively to manage the river, ongoing development of operations on it and to ensure its progressive improvement.

Enquiries:

HRO Admin, Port of London Authority,
London River House, Royal
Pier Road, Gravesend, Kent, DA12 2BG.

HRO@pla.co.uk
Tel: +44 1474 562200