

PORT OF LONDON AUTHORITY

HARBOUR REVISION ORDER 201[] – EXPLANATION OF AMENDMENTS

Definitions**(a) “barge”**

This definition is inserted in replacement of the historic term “lighter”. The term “lighter” had been used in relation to the licensing of watermen and lightermen. This regime no longer applies following the introduction of the national Boatmasters’ Licence qualification which supersedes the requirement to have a locally recognised qualification (i.e. on the Thames, membership of the Company of Watermen (for passenger vessels) and Lightermen (for goods vessels)). However, although the terms of “lighter” is no longer required for the purpose of this licensing regime and it is proposed to repeal it, there are certain instances where there needs to be substituted a reference to an equivalent type of craft used for carrying goods (e.g. section 118 re boarding vessels adrift and in the definition of “tonnage by measurement” where the reference to “tonnage of a lighter” has now been replaced with a reference to “tonnage of a barge”). In these cases “barge” has been inserted as the more appropriate modern term and a definition provided to clarify its scope.

(b) “charges”

The definition has been expanded to make it clear that consideration for a works, dredging or mooring licence is included in the term “charge” (see also explanation for article 10 below). The definition clarifies that these further charges will not be levied against those categories of person identified in section 28 who are already exempt from existing charges.

(c) “explosive”

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

(d) “fireworks”

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

(e) “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.

(f) “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 74B in particular and the new mooring licence regime generally.

(g) “mooring licence”

This has been inserted because of the addition of new sections 74A, 74B and consequential amendments set out in article 21 and the provisions on enforcement in new section 75B made for the new mooring licence regime which sections 74A and B introduce.

(h) “port rates”

This has been amended to bring the definition in line with the wording of the Harbours Act 1964. It follows the goods dues limb within paragraph (c) of the definition of “ship, passenger and goods dues” provided in s57 of the Harbours Act 1964. It is included for the purpose of the revised recovery and enforcement provisions in section 39 of the 1968 Act to ensure that these will relate to all goods dues which may be charged including from intra-port traffic.

(i) “tonnage by measurement”

As mentioned above, the reference to “tonnage of a lighter” has been replaced by reference to “tonnage of a barge”..

(j) “the vessel licensing area”

This has been amended because the vessel licensing area is effectively the whole of the Thames, including the estuary, 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 1776(M) (which superseded MSN 1504 as referred to in the Regulations). The wave heights within these classifications are such as to trigger the need to licence vessels operating within them.

(k) “waterman”

For the reasons explained under the definition of “barges” above, the reference to “lighterman” has now been deleted within this definition.

Article 3

This makes clear that the amendments to the Act only apply in relation to the functions of the PLA 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 PLA and to that company.

Article 5

In line with DfT guidance in *Modernising Trust Ports*, section 60 of the Commissioners Clauses Act will now be incorporated in the 1968 Act as a new section 4A.

Articles 6 and 7

Article 7 brings in a new section 6A, Power to appropriate parts of Port Premises, which incorporates the standard wording adopted by many harbour authorities to allow parts of the harbour to be set aside for exclusive or preferential use by a particular trade, person, or class of vessels. The wording also allows the Port Authority to appropriate parts of the premises for its own exclusive use.

Article 6 makes section 6 (Public access to port premises, PLA's equivalent of the open port duty in section 33 of the Harbours, Docks and Piers Clauses Act 1847) subject to the new section 6A.

Article 8

This amends the current section 7 (hydrographic surveys) to extend PLA's surveying function to the current seaward limit and into the estuary and approaches of the river Thames and allows PLA to publish all surveys it considers should be published to discharge its functions.

Article 9

Section 8(3) of the 1968 Act (Annual Report) has been amended to remove the onerous requirement to publish a summary of its audited accounts in one or more national daily morning newspapers. They will in future be available via the PLA's website and Subsection (4) is amended so that any member of the public who wants a copy can apply to the PLA's principal office for one, and the PLA will no longer be obliged to charge for the copies it supplies.

Article 10

Section 21 (Power to make certain charges) has been modified to address certain gaps in the PLA'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. Subsection (2) widens the general power to make charges for services to make clear that the PLA has power to charge for the use of land in which the PLA has an interest or which it controls. Subsection (3) allows reasonable charges to be made for removing, moving or mooring, maintaining or storing elsewhere a vessel or work or goods which have been removed under powers in sections 39 (Recovery and enforcement of charges) and a new section 75B (Enforcement of works and mooring licensing regime) (see further below).

New subsection (4) allows the PLA 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).

Article 11

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 and holders of a works licence or a mooring licence (the latter being brought in under a new regime set out in section 74A (see further below). Consequential changes have also been made to subsection (1) where exemptions from charging have been amended or repealed (see further below).

Subsection (4)(a) has been deleted 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 PLA under subsection 4(b) and both the schedule of charges and the regulations are available on the PLA's web site.

Article 12

Section 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 or master. This approach largely follows the provisions of paragraph 5 of Schedule 11A to the Merchant Shipping Act 1995. Charges may also be recovered where a vessel is detained under powers in section 39(2)(d) for non-payment of consideration for a works licence (under section 67), the charge for detaining the vessel is to be paid by the owner of the licensed work it was seized from. As a fallback, port rates may now be demanded from a terminal operator holding or through whose premises passed goods on which those rates have not been paid by either the trader or the person entering the goods at the Custom House by the amendment of section 35(2)(b).

Article 13

Although the definition of charges in section 2(1) of the Act is wide, it was not clear that it would include any consideration or charge for a works or dredging or mooring licence. This has been spelled out. Section 39 (Recovery and enforcement of charges) has then been widened to increase the PLA's enforcement powers in relation to river works used for mooring vessels. This would allow the PLA to seize the work and any vessel moored to it, until the consideration for the works licence (and the costs of removal, storage and maintaining the work and any vessel) has been paid and for the existing enforcement provisions to apply equally to a work as to a vessel or goods. Subsection (4) now provides for 7 days' notice to be given to a licenceholder before selling the work (and any vessel) seized for non-payment. New subsection (13) clarifies that

references to “vessel” include appurtenances, tackle and any chattels on or with it.

Articles 14, 15 and 16

The PLA’s existing borrowing powers are prescriptive 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 the model in the Harwich Haven Harbour Revision Order 2008 (SI 2008/2359), but retains a specific power to issue port stock. Because of the flexible nature of the new powers in section 48, the need for the temporary borrowing powers in section 49 of the 1968 Act will no longer be required and that section is repealed. Consequential amendments are made to the references to the ranking of port stock in section 52 (article 15) and the requirement for ministerial approval to charge interest on capital for a period of over 10 years is deleted in section 54 (article 16).

Article 17

The current exemption in section 63 (Removal of private moorings) from the need to obtain a works licence (under section 66) for private moorings placed in the river before 29 September 1857 is removed by insertion of a substituted section 63(1) bringing such ancient moorings within the requirements of section 70 (works not be constructed without a works licence). This is in order to bring old mooring rights within the existing regulatory regime to ensure all mooring rights and works are treated consistently and in the interests of navigational safety rather than relying on the general power in the current provisions to remove such moorings, which is unclear in its scope and does not give any power for the PLA to impose conditions to deal with modern conditions on the river. The PLA is now required to carry out risk assessments and requires powers to implement any changes which they may identify. There is some doubt as to whether any such moorings do in practice exist.

New subsection (1A) retains the requirement in the current subsection (1) to pay compensation to an owner of a functioning mooring chain (should there be one), falling within section 63, where the Port Authority requires it to be removed (because it is in breach of section 70).

Article 18

There are four main changes to the regime for licensing works under section 66. First, the charging regime is clarified by distinguishing more clearly between the consideration payable for works placed on the PLA’s land (addressed in subsection (2) and section 67) and the administrative charge which is payable in connection with granting a licence and monitoring compliance. The latter charge is payable whether or not the work is on PLA land and this is now specifically authorised under subsection (3B). Currently any such charge has to be included in

the consideration determined under section 67, but this is confusing as the two charges are of quite a different nature and the administrative charge is not appropriately treated as “consideration” in any case.

Secondly subsection (1) is amended to make clear that a licence can authorise the use as well as the construction of a river work. Arguably this is implicit, but the absence of an explicit provision has given rise to argument.

Thirdly on grounds of navigational safety the PLA 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.) This is only implied at present because the current wording of section 69 provides an appeal against revocation or variation of a licence by the PLA, so section 66 has been amended to allow for review of the terms of a works licence and to set out the circumstances in which a licence can be varied or revoked, in new subsections (1)(c) and (d). New subsection (3B) makes provision for a licenceholder to claim reimbursement of a part of the consideration for a licence where it is revoked or varied (though PLA can retain sums for any unpaid charges or expenses for removing or storage or disposal of a work).

Finally, additional wording in subsection (3) allows for determination of a licence application in more than 3 months, where the PLA notifies the applicant in writing. This is to allow more time to address more complicated applications.

Article 19

Section 67 (consideration for licence) has been modified so that it is clear that the procedure set out in that section is applied to determining any provision for the reassessment of the consideration as well as the assessment of the consideration. The procedures for consideration, reassessment or determination of a licence set out in section 67 now also apply in the case of mooring licences introduced by the new mooring licence regime (see further below).

Article 20

The insertion in section 69(1)(b) makes clear that the appeals provision does not extend to the terms of any reassessment of consideration for a licence. This is because section 67(1) provides for this matter to be determined not by the Department under the appeals procedure, but by the arbitrator appointed under section 67 in relation to consideration for a licence. This clarifies an issue which has given rise to argument.

Article 21

Article 21 introduces a new mooring licence regime on the river Thames by insertion of new sections 74A (Licensing of mooring) and 74B (Unauthorised mooring). It allows the PLA to be able 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.

Problems have arisen with mooring because at present, unless a works licence is granted under section 66 the PLA has no power to grant anyone a right over its land which interferes with the public right of navigation. This means that any licence to moor granted by the PLA is subject to the public right of navigation.

This is also intended to authorise the PLA to grant licences to moor vessels anywhere in the Thames, whether or not the PLA owns the bed (new section 74A), and, consistent with the powers of some other harbour authorities, makes it an offence to moor a vessel in the Thames without such a licence (new section 74B) except in particular circumstances (identified in subsection (2)). The requirement for a licence will not in particular apply to casual mooring (i.e. persons mooring for no longer than 7 days) which will cover those mooring in the exercise of the public right of navigation or riparian rights. There is also a saving for those who currently have a right to moor through an existing works licence.

As noted above, section 67 has been modified to apply the consideration provision in the case of moorings on land which the PLA owns. In relation to any other land the PLA may charge an administration fee (74A(4)). Subsection (5) makes clear that, where the bed is in the ownership of another person, the landowner's consent is also required. For consistency of approach, section 69 (Appeal to Board of Trade) is extended so that the existing appeals provisions will apply to the new mooring licence regime.

Article 22

New section 75A is intended to address administrative difficulties and uncertainties under the Act arising from the transfer of works and changes in ownership of land adjoining the works. First, subsection (1) provides that a licence may be transferred to a subsequent owner of the work. At present section 66 provides that the licence is granted to a person and it is not currently clear that the Act permits assignment of a licence, even if the consent of the PLA has to be obtained to the proposed assignee.

Secondly, subsection (2) seeks to address the problem where a landowner disposes of his interest in the adjoining land without transferring the river work attached to the land. The previous owner may have disappeared and the licence is no longer enforceable against the

landowner. Accordingly subsection (2) allows for a restriction to be placed on the title of a licenceholder's land adjacent to the work or mooring (where these are linked) so that there can be no transfer of the land without transfer of the licence.

Thirdly subsections (3) and (4) require a landowner to give notice of a transfer of a licensed work or vessel and allow the PLA from time to time to require information from the licenceholder about current ownership of the work or vessel.

These provisions are intended to assist PLA in the control of licensed works and moorings and to enable it to identify and enforce against the licenceholder 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

Article 23

New section 75B establishes standardised enforcement provisions for compliance with the terms of a licence issued under the works licensing and the new mooring licensing regimes and the existing enforcement provisions for a works licence (section 70(2) and (3)) have been deleted (see article 53/Schedule 2).

In relation to unauthorised works or moorings, this subsection (1) allows the PLA to send an enforcement notice requiring removal or abatement of the unauthorised works include reinstatement of the site or removal of the unauthorised vessel within a reasonable timescale, and to require a licenceholder to comply with the terms of the licence granted.

If the person issued with the notice does not comply with it, they will be guilty of an offence and liable on conviction to a fine (subsections (2) and (3)), and the PLA may also enforce compliance with the notice by an injunction in the civil courts (subsection (4)). The PLA may carry out the work required by the notice (as in the current section 70(3)) and may sell or dispose of a work or vessel (and any appurtenances, tackle or chattels with the vessel) detained (after giving 7 clear days' notice (subsection 8)) under this section and retain any unpaid consideration or charge and the expense of such removal and sale and may retain all the proceeds of sale where the owner does not claim them within three months of the sale. If there is a shortfall in the amount recovered by these means subsection (7) authorises the PLA to recover the difference from the owner as a debt. Where the owner of the work or vessel is not known the 7-day notice of sale is to be left on the work or vessel. These powers of disposal are in equivalent terms to those imposed for non-payment of charges (see s39) and provisions for many harbour authorities in respect of the disposal of vessels abandoned.

Subsection (10) allows the PLA to remove of an unauthorised work even if a walkway has been declared over the work under other legislation. The issue here is that without such a provision, in the event of the abandonment of such a work by the owner the PLA would have no ability to remove the work and would effectively therefore become responsible for maintaining it.

Article 24

In the interests of safety to navigation, new section 75C (Licensing of bunkering service) authorises the PLA to licence vessels to provide a bunkering service in the Thames estuary east of the Yantlet line and it will be an offence to provide such a service without a valid licence. It will also be an offence to fail to report to the Harbourmaster any spillage or damage caused by the bunkering of fuel. It also allows the PLA to derive revenue from such operations by making a charge referable to the amount of fuel which is or may be supplied, which will contribute to the cost of monitoring the area so as to allow such operations to be carried out safely. This, it is understood, in a number of other ports. This new provision does not affect any operators of terminals who will not need to be licensed.

Article 25

So as to prevent danger to navigation, new section 80A (Permanent lights on works) makes provision for the harbourmaster to require licensed 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 PLA may enter on land and the work in order to light or repair or replace existing lights on the work and recover the costs of doing so as a debt.

Article 26

Section 84 (Replacement of marked landing places) is amended by insertion of a new subsection (2) to allow the PLA to close a part of a free public landing place where they consider the remainder to be adequate for public use. This is to allow dual use of the restricted number of public accessways to the river. The stairs providing access to the foreshore to board and land from boats are now very rarely used for this purpose and have been replaced by piers which also need to be accessible by the public.

Article 27

Article 27 widens the powers of the PLA to enter on to third party land under section 90 (Entry on land to survey, etc.) by including new powers to enter for the purposes of monitoring compliance with the terms of a works, dredging or mooring licence and for inspecting a vessel which is subject to the PLA's licensing regime under section 124 (Unlicensed vessels not to be

navigated).

Article 28

Section 91 (Times when public use of Thames may be restricted) 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 and would cover, for instance, filming on 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 PLA 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.

Article 29

The provisions of section 92 (Abatement of nuisances) have been extended to enable the PLA to recover as a debt in the courts the expenses it incurs in abating a nuisance or annoyance from the person who created it.

Article 30

The purposes for which the harbourmaster may give special directions under section 112 (special directions to vessels in the Thames) are extended to enable the harbourmaster to enforce a restriction or exclusion on public use of the Thames under section 9. A new subsection (3) clarifies that special directions given for the purposes set out in subsection (2) may be given to all vessels or to a class of vessels on the river.

Article 31

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.

Article 32

As the term "lighter" is no longer used and is (by article 53 and Schedule 2) repealed in the Act, 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".

Article 33

Section 119(1) has been widened to allow “any other chief constable” to give orders with a view to maintaining public order and safety because the PLA’s extends over an area beyond the bounds of the Metropolitan police area, for instance, into Essex and Kent.

Article 34

Subsection (1) of the section 120 has been amended to remove the word “convenient”, so that the obligation on the PLA to remove a sunk or abandoned vessel is limited to a vessel which in the opinion of the harbourmaster is an obstruction or danger to the safe navigation or use of the Thames only. The current wording requires that the PLA must remove a vessel which it may be argued is an obstruction to the convenience of certain users, without it being an obstruction or danger to safe navigation.

The deletion of the word “convenient” in subsection (1) is supplemented by the insertion of new subsection (1A). New subsection (1A) confers a power on the PLA to raise or remove a vessel which is not an obstruction or danger to safe navigation (as in subsection (1)) but may be an obstruction or danger to convenient navigation, and spells out more particularly, that it may be an impediment to a particular person’s ability to moor. In these circumstances the PLA can raise and remove the sunk or abandoned vessel and if this has been done to aid the convenience of another person, the PLA may charge them for doing so. The intention is to cover for instance the case where a developer of land on the shore asks for the removal of obstruction in the river which would allow more convenient access to this development.

Subsections (2) and (4) are amended so that their scope applies equally to new subsection (1A). In subsection (5), consistent with other changes in the Order, for the reference to “head office” there is substituted “principal office”, on the basis that the PLA no longer has a head office.

Article 35

In section 124 of the Act, the exemptions from the need under subsection (1) for a vessel to be licensed by PLA to navigate, work or moor on the Thames are contained in subsection (2). Two changes are proposed to those exemptions. First, under subsection (2)(f), there is now 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 PLA 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.

New subsection (2A) has been introduced because the proposed Thames byelaws (if confirmed) will permit certain vessels approved by the Harbourmaster by 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 PLA considers it appropriate in the case of all vessels carrying 12 or less passengers which seek a certificate from the harbourmaster to exceed the speed limit to be licensed by PLA. The survey requirements for small commercial vessels currently operating on the Thames under the MCA's SCV code or under existing codes referred to in the Merchant Shipping (Vessels in commercial use for sport or pleasure) Regulations 1998, none of which is mandatory, is not entirely clear and may depend (in relation to the Load Line Regulations) on whether a vessel has registered as a United Kingdom ship or not. The amendment will ensure that all such small commercial vessels which are looking to exceed the speed limit will be surveyed under the PLA's own licensing regime.

Article 36

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).

Article 37

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 on the river. Subsection(1) will require the PLA'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.

Article 38

Section 134 of the Act is extended to include in subsection (1)(a)(i) reference to "the bed of the Thames", to make clear that the PLA can recoup the costs of making good damage to the bed of the river caused by a vessel, and 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 following damage to the bed of the river.

Article 39

Section 137 is extended to allow the PLA to board vessels anywhere within its limits for inspection under the PLA's own legislation and byelaws or to prevent or extinguish a fire. Since "docks" are defined as docks vested in and administered by the Port Authority the power would not currently apply to the docks on the Thames.

It is further clarified under a new subsection (2) that a PLA officer boarding a vessel may exercise the full range of powers in section 259((2)(b) to (k) of the Merchant Shipping Act 1995 to examine and investigate. A new subsection (3) applies section 260 of the Merchant Shipping Act (provisions supplementary to s259) in relation to the exercise of powers under section 259, but qualifies it so that the sanction for obstructing a PLA officer or not complying with a requirement or making a false statement is limited to a fine, rather than a prison term, in line with the limitations on the extent of penalties imposed by a HRO. By applying section 259 this will enable the PLA to pick up any regulations as to exercise of powers within that section, rather than providing what may become an out-dated list of powers.

Article 40

The amendments to section 138 are made in order to assist the PLA in identifying the master and owner 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. 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 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 as well as the owner of a vessel to give the PLA information as to who was the master of the vessel at a given time. Subsection (4) allows the PLA to use any information obtained under subsection (3) as evidence to determine the identity of the owner or master of a vessel at a particular time. New subsection (5) provides a wide definition for "owner" to include any person having an interest in a vessel so that the PLA can make as wide an inquiry as possible to ascertain who at a particular time was in charge of the vessel.

Article 41

To assist PLA in relation to administering charges, section 141 is amended in subsection (1) to provide a timescale in which any vessel entering or leaving a berth which is required under the charges regulations to give a manifest or report on cargo to the PLA must do so. As the current penalty for not complying with subsection (1) is fixed at £20 reference has been made to "level 1 on the standard scale" to enable the figure to be adjusted in line with any changes in the levels on the standard scale. A reference to level 1 on the standard scale was not substituted by the Criminal Justice Act 1982, because this was a figure which had been updated by the Port of London Act 1982.

Article 42

Section 162 is amended to allow the PLA 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.

Article 43

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.

Article 44

The purpose of the amendment to subsection (3)(a) of the byelaw confirmation procedure in section 168 is to limit the obligations of the PLA 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 requirement to publish also in the London Gazette is more onerous, and given that the only morning daily newspaper published in London is now a national daily, PLA considers that the publication of the notice only in the local area is more appropriate. 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.

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

Through its website the PLA 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 of charge. The PLA 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).

Article 45

The concern here is to prevent rights of way being acquired by long use over licensed works or approaches to them. The effect of such rights being acquired is that the PLA could not remove the work if it is abandoned. 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.

Article 46

New article 175B is included to apply to those parts of the Thames owned by the PLA 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 PLA 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 it will not apply to right of action which has occurred more than 12 years before the date of the Order coming into force.

Article 47

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

As in the case of the PLA’s byelaws, it may choose not to charge for hard copies of its publications (especially as copies are available free of charge on the PLA website) and for this reason the words “if demanded” have been added to the end of paragraph (b).

Article 48

The insertion of the reference to section 74B in subsection (3) of section 186 of the Act clarifies that the provisions relating to unauthorised mooring do not apply to Crown vessels or their current or future moorings.

Article 49

The additional words added to subsection (3)(a) of section 195 of the Act are intended to allow the PLA 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 PLA needs to ensure that unfettered use of statutory undertakers’ powers does not prevent appropriate river development. The new paragraph 4A spells out that the PLA’s direction may include a requirement that statutory undertakers’ apparatus be moved (for instance to ensure cables or pipes may not be caught in any dredging operations where the bed is eroding). As this is to be at the expense of the Port Authority, it is a power that the PLA are likely to use carefully.

Article 50

Section 200 of the Act 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. This is in line with other harbour authority powers such as section 25 of the Harwich Harbour Act 1974. Subsection (5) is extended to include provisions to allow PLA 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'.

Article 51 and Schedule 1

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 PLA's limits even though they are no longer owned by the [PLA] 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.

Article 52

In keeping with general practice, section 52 and Schedule 1 to the Order updates measurements in the Act from imperial to metric.

Article 53 and Schedule 2

Article 53 and Schedule 2 set out the various repeals to the 1968 Act, some of which are consequential on modifications to provisions of the Act described elsewhere in this note.

For the repeal of "lighter" and "lightermen" see the comments on the definition of "barge". The term "craft", "river duties of tonnage", "the Surrey Canal" and "tug" are no longer used in the Act.

The repeal of section 2(3) is consequential on the amendment of the definition of "port rates" and the repeal of the various exemption provisions.

Sections 27, 29 to 31, 32 and 33, 209 and Schedule 10, 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. The repeal of section 41 is consequential on this.

The repeal of section 49 is consequential on article 14.

The repeal of section 58 reflects the repeal of the legislation to which it relates by the Government Trading Act 1990. It is now redundant.

The repeal of section 68 is consequential on article 17.

The repeal of section 70(2) and (3) is consequential on article 23.

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 PLA no longer has any power under section 164 of the Act to make byelaws for their government and regulation. The PLA therefore has no reason for continuing with the register, which contains personal data.

Section 175 is repealed because it is unclear and also appears to be quite unnecessary. The Planning Act 1990 and the General Permitted Development Order work quite clearly in relation to the PLA as they do in relation to other harbour authorities. This provision does not help to clarify and only confuses the position.

As regards section 180 and Schedule 7, many of the relevant obligations have now been released, but all the remainder relate to docks and land which the PLA has disposed of and no longer has an interest in. Further, the PLA no longer has the necessary rights to comply with the various obligations set out in Schedule 7 as the responsibility in relation to the works has passed to its successors in title.