

2023 No. 0000

HARBOURS, DOCKS, PIERS AND FERRIES

**The Portreath, Portscatho and Portwrinkle Harbour
Empowerment Order 2023**

| | |
|-------------------------------|-----------------------|
| <i>Made</i> - - - - | <i>20th June 2023</i> |
| <i>Laid before Parliament</i> | <i>26th June 2023</i> |
| <i>Coming into force</i> - - | <i>17th July 2023</i> |

CONTENTS

**PART 1
PRELIMINARY**

1. Citation, commencement and extent
2. Interpretation
3. Incorporation of provisions of Harbours, Docks and Piers Clauses Act 1847

**PART 2
HARBOURS JURISDICTION**

4. Harbours Jurisdiction
5. Amendment of the Harbour Revision Order

**PART 3
SAVINGS**

6. Crown Rights
7. Saving for Trinity House

SCHEDULE — LIMITS OF THE HARBOURS

Cornwall Council has applied for a harbour empowerment order in accordance with section 16(1)(a) and (2)(a) of the Harbours Act 1964(a) (“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(b) under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 16(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 16(5) and in exercise of the powers conferred by section 16(1), (2) and (6), makes the following Order.

PART 1 PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Portreath, Portsatho and Portwrinkle Harbour Empowerment Order 2023 and shall come into force on 17th July 2023.

(2) This Order extends to England and Wales.

Interpretation

2.—(1) In this Order—

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(f);

“the Act of 1964” means the Harbours Act 1964;

“the Act of 1995” means the Merchant Shipping Act 1995(g);

“the Council” means Cornwall Council;

“harbours” means the harbours of Portreath, Portsatho and Portwrinkle the limits of which are defined in the Schedule (limits of the harbours);

“harbour facilities” means shipping, fisheries, marine, recreational, leisure, tourism and retail facilities (including buildings);

“harbour limits plans” means the Portreath Harbour Limits Plan, the Portsatho Harbour Limits Plan, and the Portwrinkle Harbour Limits Plan(h);

“harbour master” means any person appointed as such by the Council, and includes the duly authorised deputies and assistants of the harbour master and any person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of harbour master;

(a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c. 42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c. 48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c. 56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c. 23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(b) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by section 315 of, and paragraphs 1 and 3(1) of Schedule 21 to, the Marine and Coastal Access Act 2009 (c. 23).

(d) For the definition of “the Minister”, see section 57(1) of the Harbours Act 1964 (c. 40).

(e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23). The head office address of the Marine Management Organisation is located at Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH.

(f) 1847 c. 27.

(g) 1995 c. 21.

(h) The harbour limits plans may be inspected during working hours at the principal office of Cornwall Council, New County Hall, Treyew Road, Truro TR1 3AY and via the Council’s harbours website at www.cornwallharbours.co.uk.

“harbour premises” means land above the level of low water within the areas shown outlined red on the harbour limits plans for the time being vested in or occupied or administered by the Council as part of the undertaking and occupied wholly or mainly for the purpose of activities there carried on; which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, car parks, sheds, buildings and all other works and conveniences, land and premises, shown for illustrative purposes shaded green on the harbour limits plans;

“the Harbour Revision Order” means the Cornwall Harbours Harbour Revision Order 2023(a);

“land” includes land covered by water;

“level of high water” means the level of mean high water spring tides;

“level of low water” means the level of mean low water spring tides;

“Portreath Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portreath Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Portscatho Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portscatho Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Portwrinkle Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portwrinkle Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;

“Trinity House” means the Corporation of Trinity House of Deptford Strond(b);

“undertaking” means the harbours undertaking for the time being of the Council relating to any or all of the harbours;

“vessel” includes a ship(c), boat, houseboat, raft or craft of any description, however propelled or moved, and includes non-displacement craft, watercraft, a hydrofoil vessel, or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

“watercraft” means any type of craft which—

- (a) is capable of moving under its own mechanical power,
- (b) is used, navigated or situated wholly or partially in or on water; and
- (c) is capable of being used to carry one or more persons,

but does not include a ship or fishing vessel within the meanings given in section 313(1) of the Act of 1995.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) In this Order longitude and latitude are stated by reference to the World Geodetic System (WGS84), revised in 1984 and further revised in 2004.

(a) S.I. 2023/675.

(b) The Corporation of Trinity House, Tower Hill, London EC3N 4DH.

(c) As defined in section 57 (interpretation) of the Harbours Act 1964 (c. 40).

Incorporation of provisions of Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 26, 28 to 31, 42, 48 to 50, 67, 70, 84 to 92 and 99 to 102) (so far as applicable to the purposes and not inconsistent with the provisions of this Order) is incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) Section 63 of the Act of 1847 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 69 of the Act of 1847 (combustible matters on quays, &c., to be removed) shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) In construing the provisions of the Act of 1847 as incorporated with this Order—

- (a) the expression “the special Act” means this Order;
- (b) the expression “the undertakers” means the Council;
- (c) the expression “the harbour, dock, or pier” shall mean the harbours, and includes those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
- (d) for the definition of the word “vessel” in section 3 of the Act of 1847 (interpretation) there shall be substituted the definition of that word in article 2(1) of this Order;
- (e) the reference in section 53 of the Act of 1847 (penalty on shipmasters not complying with directions of the harbour master) to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing if in the circumstances it is not reasonably practicable for the harbour master to serve a written notice on the master, and in such circumstances the said reference may be construed as including the communication of the notice orally or otherwise.

PART 2

HARBOURS JURISDICTION

Harbours Jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Act of 1964 (interpretation), and the powers of the harbour master shall be exercisable within the harbours, the limits of which are described in the Schedule to this Order and shown on the harbour limits plans.

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbours referred to in the Schedule and the boundaries shown on the harbour limits plans, the limits as shown on the harbour limits plans shall be deemed to be correct and shall prevail.

(3) For and incidental to the performance of their functions under this Order, the Council may employ and appoint harbour masters.

(4) The Council shall, within the harbours, be a local lighthouse authority within the meaning of sections 193 (general and local lighthouse authorities) and 201 (powers of harbour authorities) of the Act of 1995.

Amendment of the Harbour Revision Order

5.—(1) From the date of this Order the Harbour Revision Order is amended as follows.

(2) In article 2 (interpretation)—

- (a) in the definition of “harbours”, after “Penzance,” insert “Portreath, Portscatho, Portwrinkle,”;
- (b) in the definition of “harbour limits plans”, after “the Penzance Harbour Limits Plan,” insert “the Portreath Harbour Limits Plan, the Portscatho Harbour Limits Plan, the Portwrinkle Harbour Limits Plan,”;
- (c) in the appropriate places insert—

““Harbour Empowerment Order” means the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023;”;

““Portreath Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portreath Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;”;

““Portscatho Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portscatho Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;”;

““Portwrinkle Harbour Limits Plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Portwrinkle Harbour Limits Plan referred to in the Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023” one copy of which is deposited at the offices of the Marine Management Organisation and one copy at the principal office of the Council;”.

- (3) In article 50 (power to dredge) after paragraph (3) insert—

“(4) The exemption in section 75 of the Marine and Coastal Access Act 2009 (exemptions for certain dredging etc activities) shall not apply to the harbours of Portreath, Portscatho and Portwrinkle.”.

- (4) In Schedule 1 (limits of the harbours)—

- (a) in the appropriate place insert—

“Portreath Harbour

5. The area within an imaginary line commencing at a point (50°15'50.51837"N, 005°17'31.53797"W) then in a straight line in a south westerly direction to a point at the northern end of the pier (50°15'49.09131"N, 005°17'34.40843"W) then following the seaward side of the pier along the level of high water and then in a southerly direction to a point (50°15'40.92978"N, 005°17'30.75737"W), then following the level of high water around the two tidal basins and turning basin (along the north eastern side) back to the point of commencement (50°15'50.51837"N, 005°17'31.53797"W) and the harbour premises, as shown outlined red on the Portreath Harbour Limits Plan.

Portscatho Harbour

6. The area within an imaginary line commencing at a point (50°10'43.64932"N, 004°58'16.91173"W) then in a straight line in a north easterly direction to a point at (50°11'08.41656"N, 004°58'06.31798"W) then following the level of high water along the coast back to the point of commencement (50°10'43.64932"N, 004°58'16.91173"W) and the harbour premises, as shown outlined red on the Portscatho Harbour Limits Plan.

Portwrinkle Harbour

7. The area within an imaginary line commencing at a point (50°21'40.44036"N, 004°18'53.92665"W) then following the level of high water around the northern edge of the

harbour to the northern edge of the quay and then in a straight line in an easterly direction to a point at the north eastern end of the quay (50°21'40.23610"N, 004°18'50.65529"W) then following the seaward side of the quay along the level of high water to a point (50°21'39.95922"N, 004°18'54.16899"W), then in a straight line in a north east easterly direction back to the point of commencement (50°21'40.44036"N, 004°18'53.92665"W) and the harbour premises, as shown outlined red on the Portwrinkle Harbour Limits Plan.”;

- (b) after the heading “Prince of Wales Pier” substitute “5” for “8”;
 - (c) after the heading “St Ives Harbour”, substitute “6” for “9”;
 - (d) after the heading “Port of Truro”, substitute “7” for “10”.
- (5) In Schedule 5 (Acts and Orders), in the appropriate place insert—

“8. Portreath, Portscatho and Portwrinkle Harbour Empowerment Order 2023.”.

PART 3 SAVINGS

Crown Rights

6.—(1) Nothing in this Order shall—

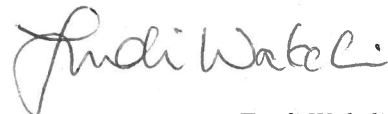
- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown;
- (b) authorise the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—
 - (i) His Majesty in right of the Crown and under the management of the Crown Estate Commissioners, without the consent in writing of the Crown Estate Commissioners,
 - (ii) the Duchy of Cornwall or enjoyed by the possessor for the time being of the Duchy of Cornwall, without the prior consent of the Duke of Cornwall testified in writing under the seal of the said Duchy or, the consent in writing of two or more of such of the regular officers of the said Duchy or other such persons as may be authorised under section 39 of the Duchy of Cornwall Management Act 1863(a) (proviso for exercise of powers when the Duchy of Cornwall is vested in the Crown),
 - (iii) a government department, or held in trust for His Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph 1(b) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

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

Signed by authority of the Marine Management Organisation



Trudi Wakelin

Director of Marine Development (Domestic and International)
An authorised employee of the Marine Management Organisation

Date 20/6/23

(a) 1863 c. 49.

SCHEDULE

Article 4

LIMITS OF THE HARBOURS

Portreath Harbour

1. The area within an imaginary line commencing at a point (50°15'50.51837"N, 005°17'31.53797"W) then in a straight line in a south westerly direction to a point at the northern end of the pier (50°15'49.09131"N, 005°17'34.40843"W) then following the seaward side of the pier along the level of high water and then in a southerly direction to a point (50°15'40.92978"N, 005°17'30.75737"W), then following the level of high water around the two tidal basins and turning basin (along the north eastern side) back to the point of commencement (50°15'50.51837"N, 005°17'31.53797"W) and the harbour premises, as shown outlined red on the Portreath Harbour Limits Plan.

Portscatho Harbour

2. The area within an imaginary line commencing at a point (50°10'43.64932"N, 004°58'16.91173"W) then in a straight line in a north easterly direction to a point at (50°11'08.41656"N, 004°58'06.31798"W) then following the level of high water along the coast back to the point of commencement (50°10'43.64932"N, 004°58'16.91173"W) and the harbour premises, as shown outlined red on the Portscatho Harbour Limits Plan.

Portwrinkle Harbour

3. The area within an imaginary line commencing at a point (50°21'40.44036"N, 004°18'53.92665"W) then following the level of high water around the northern edge of the harbour to the northern edge of the quay and then in a straight line in an easterly direction to a point at the north eastern end of the quay (50°21'40.23610"N, 004°18'50.65529"W) then following the seaward side of the quay along the level of high water to a point (50°21'39.95922"N, 004°18'54.16899"W), then in a straight line in a north east easterly direction back to the point of commencement (50°21'40.44036"N, 004°18'53.92665"W) and the harbour premises, as shown outlined red on the Portwrinkle Harbour Limits Plan.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of Cornwall Council relates to the harbours of Portscatho, Portreath and Portwrinkle and makes the Council the statutory harbour authority in respect of each of them.

The Order provides for:

(1) The Council to become the statutory harbour authority for the harbours and to have jurisdiction over the harbours (including the harbour premises) as set out in article 4 (harbours jurisdiction) and the Schedule (limits of the harbours). The harbour limits plans may be inspected during working hours at the office of the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH and the principal office of Cornwall Council. The plans are also available electronically on the Council's harbours website www.cornwallharbours.co.uk.

(2) The amendment of article 2 and Schedule 1 of the Cornwall Harbours Harbour Revision Order 2023 (S.I. 2023/675) to apply its provisions to the harbours, so that the harbours will all be governed under the provisions of the Cornwall Harbours Harbour Revision Order 2023 (article 5).

(3) The amendment of article 50 (power to dredge) of the Cornwall Harbours Harbour Revision Order 2023 so that the dredging exemption in section 75 of the Marine and Coastal Access Act 2009 does not apply to the Portreath, Portscatho and Portwrinkle harbours (article 5).

(4) The amendment of Schedule 5 (Acts and Orders) of the Cornwall Harbours Harbour Revision Order 2023 to insert a reference to this Order (article 5).

(5) Crown Rights (article 6) and Saving for Trinity House (article 7).

A full impact assessment has not been prepared for this instrument as no, or no significant, impact is predicted on businesses, charities, voluntary bodies or the public sector.

An Explanatory Memorandum together with a copy of the harbour limits plans is available alongside the instrument on the UK legislation website at www.legislation.gov.uk.