

1981 No. 1819

**HARBOUR, DOCKS, PIERS AND FERRIES**

**The Yealm Harbour Revision Order 1981**

<i>Made - - - -</i>	<i>6th October 1981</i>
<i>Laid before Parliament</i>	<i>5th November 1981</i>
<i>Coming into Operation</i>	<i>16th December 1981</i>

The Secretary of State for Transport (hereinafter referred to as “the Secretary of State”), in exercise of the powers conferred by section 14 of the Harbours Act 1964<sup>(a)</sup> and now vested in him <sup>(b)</sup> and of all other powers enabling him in that behalf, and on the application of the River Yealm Harbour Association, hereby makes the following Order:—

*Citation and commencement*

1.—(1) This Order may be cited as the Yealm Harbour Revision Order 1981, and shall come into operation on the date fixed in accordance with the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965<sup>(c)</sup>.

(2) So much of the Plympton St. Mary Rural District Council Act 1933<sup>(d)</sup> as relates to the harbour, the Yealm Harbour Revision Order 1970<sup>(e)</sup> and this Order may be cited together as the Yealm Harbour Act and Orders 1933 to 1981.

*Interpretation*

2. In this Order—

“the Act of 1933” means the Plympton St. Mary Rural District Council Act 1933;

“enactment” means any Act or any order or scheme made under an Act;

“the appointed day” means 1st January 1982 or the first day of the third month after the expiry of the month current at the commencement of this Order, whichever is the later;

“the Authority” means the River Yealm Harbour Authority incorporated under article 3 of this Order;

“the Council” means the South Hams District Council;

“the harbour” has the same meaning as in the Order of 1970;

“the Order of 1970” means the Yealm Harbour Revision Order 1970;

“the undertaking” means, in relation to any period before the appointed day, the undertaking of the Council in relation to the harbour, and in

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<sup>(a)</sup> 1964 c.40.

<sup>(b)</sup> S.I. 1981/238.

<sup>(e)</sup> S.I. 1970/890.

<sup>(c)</sup> 1945 c.18 (9 & 10 Geo. 6); 1965 c.43.

<sup>(d)</sup> 1933 c.lxxviii.

relation to any period on and after the appointed day, the undertaking of the Authority as from time to time authorised.

#### *Incorporation of the Authority*

3.—(1) As from the appointed day there shall be constituted an authority to be known as the River Yealm Harbour Authority, for the purpose of exercising the functions from time to time conferred or imposed on them by virtue of this Order or of any other enactment.

(2) The Authority shall be a body corporate with perpetual succession and a common seal the fixing of which shall be authenticated by the signature of any person or persons authorised by the members of the Authority to act for that purpose.

(3) The procedural and other provisions of the Schedule to this Order shall have effect in relation to the Authority.

#### *Constitution of the Authority*

4.—(1) The Authority shall consist of eleven members of whom eight shall be appointed as follows:—

- (a) by the Council, one member;
- (b) by the Parish Council of Newton and Noss, three members;
- (c) by each of the Parish Councils of Brixton, Wembury and Yealmpton, one member;
- (d) by the Royal Yachting Association one member after consultation with the Yealm Yacht Club or, if the Yealm Yacht Club shall cease to exist, after consultation with such other body (if any) as may be formed to represent yachting interests within the harbour and recognised by the Royal Yachting Association;

and three shall be elected pursuant to article 5 below.

(2) Subject to article 6 below each member of the Authority shall (unless he previously dies or retires from office) hold office for a period of three years and shall then retire, but shall be eligible for re-appointment or re-election.

#### *Election of members*

5.—(1) In this article the “returning officer” means in the case of the first election, the Chairman for the time being of the Council or, if he is unable or unwilling to act, a person nominated by him and, in the case of each subsequent election, means the Chairman for the time being of the Authority.

(2) The members of the Authority to be elected under article 4(1) above shall be elected from among themselves by the persons who are authorised to place, lay down, maintain or use moorings in the harbour in accordance with byelaws made under section 34(1)(a) of the Act of 1933(a).

(3) The returning officer shall fix the date of each election and shall:—

- (a) at least one month before the date of the election publish in a newspaper circulating in the area of the harbour a notice calling for nominations for the purposes of this article, setting out the provisions of paragraph (2) above, specifying the time and place of the election and the closing date for receipt of nominations;
- (b) at least 7 days before the date of election publish in the same newspaper a list of persons so nominated;

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(a) Section 34 was amended by article 10 of the Order of 1970.

- (c) call a meeting at the time and place so notified of all persons who at the date of the publication of the notice under sub-paragraph (a) above are authorised to place, lay down, maintain or use moorings in the harbour as mentioned in article 5(2) above and proceed to hold a ballot of the persons attending the meeting; and
- (d) thereafter publish, as soon as may be, in the same newspaper the names of the persons so elected.

#### *Removal from office*

6. If a member of the Authority:—

- (a) has been absent from meetings of the Authority for three consecutive meetings without the permission of the Authority; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a member; or
- (d) is otherwise unable or unfit to discharge the functions of a member;

the Authority may declare his office as a member of the Authority to be vacant and thereupon the office shall become vacant.

#### *Casual vacancies*

7. A casual vacancy arising among the appointed members of the Authority shall be filled by the appointment of a new member by the same body or bodies as appointed the vacating member and a casual vacancy arising among the elected members of the Authority by the appointment of a new member by the Authority provided that a member appointed to fill a casual vacancy shall hold office only for the remainder of the vacating member's term of office.

#### *Transfer of functions, property etc.*

8.—(1) On the appointed day there shall be transferred from the Council to the Authority the powers and duties conferred or imposed on the Council by the provisions of the Yealm Harbour Act and Order, 1933 and 1970, and accordingly as from that day those provisions, and any byelaws made thereunder, shall have effect, subject to the necessary modifications, as if for any reference therein (however worded and whether express or implied) to the Council there were substituted a reference to the Authority.

(2) On the appointed day there shall be transferred to and vested in the Authority the undertaking as existing immediately before that day, including the lands, works, buildings, machinery, and stores, all other real and personal property, assets and effects, rights, powers and privileges, vested in or enjoyed by the Council, and all liabilities and obligations to which the Council were then subject, in relation to the undertaking.

(3) Every byelaw in force in relation to the harbour immediately before the appointed day, and every licence issued thereunder and in force immediately before that day shall have effect as if made or issued by the Authority and, in the case of byelaws, confirmed as provided in this Order.

#### *Transitional carrying on of undertaking*

9. The Council in carrying on the undertaking until the appointed day shall not enter into any contract or incur any liability otherwise than in the ordinary course of carrying on the undertaking, or make any unnecessary or exceptional expenditure other than expenditure reasonably incurred in connection with the transfer of the undertaking under this Order.

*Inspection of books etc.*

10. The Authority may at all reasonable times inspect and shall at their expense be entitled to copies of all registers, books of account, maps, plans, specifications, engineering reports and other documents which relate to the undertaking and are under the control of the Council.

*General powers of the Authority*

11.—(1) The Authority may, subject to the provisions of the Yealm Harbour Act and Orders 1933 to 1981, take such steps from time to time as they may consider necessary for the improvement, maintenance and management of the harbour and the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of the foregoing, the Authority may:—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide facilities therein;
- (b) turn their resources to account so far as not required for the purposes of the undertaking; and
- (c) do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the undertaking.

*Confirmation of byelaws*

12.—(1) Byelaws made by the Authority under powers transferred to them by this Order shall not come into operation until they have been confirmed by the Secretary of State.

(2) At least one month before application for confirmation of byelaws is made by the Authority to the Secretary of State, notice of the intention to apply for confirmation and of the place at which and the times during which a copy of the byelaws shall be open to inspection shall be published once in each of two successive weeks in one and the same newspaper circulating in the area of the harbour.

(3) During the period of at least one month before application is made for confirmation of the byelaws a copy of the byelaws shall be kept at the offices of the Authority and shall at reasonable hours be open to public inspection without payment.

(4) The Authority shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it, on payment of a reasonable charge.

(5) During the period of one month after completion of the publication of any notice required by paragraph (2) above any person may make in writing to the Secretary of State any objection to or representation respecting the byelaws to which the notice relates.

(6) The Secretary of State may confirm the byelaws in the form submitted to him or with such modifications as he thinks fit, or may refuse to confirm them:

Provided that where the Secretary of State proposes to make a modification which appears to him to be substantial, he shall inform the Authority and require them to take any steps he considers necessary for informing persons likely to be concerned with the modification, and shall not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Authority and by other persons who have been informed of it.

(7) When confirmed the byelaws shall be published by the Authority.

(8) Subsection (4) of section 34 of the Act of 1933 is hereby repealed.

*Borrowing powers*

13.—(1) The Authority may from time to time borrow upon the security of all or any of the revenues and property of the Authority and by any method or methods they see fit—

- (a) such sums of money as they may think necessary not exceeding in the aggregate sixty thousand pounds; and
- (b) with the consent of the Secretary of State such further sums of money as they may require:

Provided that in calculating for the purpose of sub-paragraph (a) of this paragraph the aggregate sums of money borrowed by the Authority there shall be excluded any sums borrowed for use within twelve months of the date of borrowing for repayment of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(2) Moneys borrowed by the Authority under this article shall be applied only to purposes to which capital money is properly applicable.

(3) For the purposes of paragraph (2) above but without prejudice to the generality thereof, purposes to which capital money is properly applicable shall be deemed to include:—

- (a) the payment of any interest falling due within the five years immediately following the date of the borrowing or any sum of money borrowed by the Authority under this article; and
- (b) the repayment within twelve months of the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(4) It shall not be lawful to exercise the powers of borrowing conferred by this article otherwise than in accordance with the provisions of any Order for the time being in force under section 1 of the Borrowing (Control and Guarantees) Act 1946(a).

(5) Article 15 of the Order of 1970 is hereby repealed.

*Temporary borrowing*

14.—(1) The Authority may borrow temporarily, by way of overdraft or otherwise, such sums as they may require for meeting their obligations or discharging their functions under or in pursuance of any enactment:

Provided that the total amount outstanding at any one time of money so borrowed shall not exceed ten thousand pounds.

(2) The power conferred by this article shall be in addition to any other borrowing power for the time being enjoyed by the Authority.

*Accounts and audit*

15.—(1) The Authority shall cause to be kept proper accounts of all sums received or paid by them and proper records in relation to those accounts; and the accounts of each financial year of the Authority shall be audited by an auditor or auditors appointed under this article.

(2) No persons shall be qualified to be appointed auditor under this article unless he is a member or, in the case of a firm, all the partners therein are members of one or more of the following bodies:—

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(a) 1946 c.58.

The Institute of Chartered Accountants in England and Wales;  
The Institute of Chartered Accountants of Scotland;  
The Association of Certified Accountants;  
The Institute of Chartered Accountants in Ireland;  
Any body of accountants established in the United Kingdom and recognised for the purpose of section 161 (1)(a) of the Companies Act 1948(a) by the Secretary of State.

(3) The Authority shall cause to be made out annually a balance sheet and a statement of income and expenditure made up to the end of the financial year of the Authority.

(4) The audited accounts of the Authority shall at all reasonable times be open to inspection and transcription without payment by any interested person.

*For the protection of the Kitley Estate*

16. Nothing in the Yealm Harbour Act and Orders 1933 to 1981 shall interfere with, prejudice or affect the full enjoyment and use of any estate right power privilege or exemption now used or enjoyed by the owner or tenants or licensees for the time being of the estate known as the Kitley Estate near Yealmpton in the County of Devon.

*For the protection of marine farming operations*

17. Nothing in the Yealm Harbour Act and Orders 1933 to 1981 shall interfere with, prejudice or affect any marine farming operation or operations on or over any land (not being land leased on the appointed day by the Crown Estate Commissioners to the Authority) except insofar as the public right of navigation may be prejudiced by any such operation.

*Crown rights*

18. Nothing in this Order shall affect prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing herein contained shall authorise the Authority to take, use, or in any manner interfere with, any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary or any land, hereditaments, subjects or rights of whatsoever description belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners on behalf of Her Majesty first had and obtained for that purpose.

*Unconfirmed byelaws*

19. Any byelaws made by the Council in relation to the harbour which have not been confirmed by the Secretary of State before the commencement of this Order may be confirmed by the Secretary of State as if application for confirmation of the byelaws in question had been made by the Authority in accordance with article 12 of this Order and the procedure prescribed by that article had been complied with in all respects.

*Repeals*

20. Sections 13 to 16, 19 and 21 of the Act of 1933 are hereby repealed.

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(a) 1948 c.38.

### *Costs of Order*

21. The costs, charges and expenses of and incidental to preparing and obtaining this Order, and otherwise in relation thereto, shall be paid by the River Yealm Harbour Association.

*David Howell*  
Secretary of State  
for Transport.

6th October 1981.

## SCHEDULE

### Article 3

#### PROCEDURAL AND OTHER PROVISIONS RELATING TO THE AUTHORITY

1. At the first meeting of the Authority and at the first meeting of the Authority held after the 31st March in each year the members of the Authority shall choose one of their number to act as chairman and another to act as vice-chairman and each of the persons so appointed shall hold office until the 31st March next following the appointment and shall then be eligible for re-appointment.
2. In the absence or inability to act of the chairman of the Authority the vice-chairman thereof shall act in his stead and for that purpose shall have all the powers of the chairman.
3. The Authority shall first meet not later than 14 days after the appointed day and shall meet thereafter on such occasions as shall be determined by the Authority:  
Provided that the Authority shall hold not less than 8 meetings in each year.
4. At meetings of the Authority the quorum shall be five.
5. A member of the Authority may resign his office at any time by notice in writing given to the chairman of the Authority.
6. The proceedings of the Authority shall not be invalidated by any vacancy in their number or by any defect in the appointment, or election or the qualification for appointment, or election of any person as a member.
7. Subject to the provisions of this Order, the Authority shall determine their own practice and procedure.

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## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

### This Order

- i establishes and incorporates the River Yealm Harbour Authority, and provides for the appointment and election of members and their tenure of office.
- ii transfers to the said Authority the harbour undertaking carried on by the South Hams District Council, together with the relevant statutory functions, property, liabilities and obligations; and
- iii confers on the Authority additional powers to improve, maintain and manage the harbour, and to borrow monies.

The Order being subject to Special Parliamentary Procedure, the provisions of the Statutory Orders (Special Procedure) Acts 1945 and 1965 determine the date upon which it comes into operation.

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STATUTORY INSTRUMENTS

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**1981 No. 1819**

**HARBOUR, DOCKS, PIERS AND FERRIES**

**The Yealm Harbour Revision Order 1981**

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