

**2010 No. 703**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Portland Harbour Revision Order 2010**

*Made* - - - - - *4th March 2010*

*Coming into force* - - - - - *19th March 2010*

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Portland Harbour Authority Limited has applied for a harbour revision order under section 14 of the Harbours Act 1964(a)

The Secretary of State is satisfied as mentioned in section 14(2)(b) of that Act;

The Secretary of State (being the appropriate Minister under section 14(b) of that Act) in exercise of the powers conferred by that section(c) makes the following Order:—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1.—(1) This Order may be cited as the Portland Harbour Revision Order 2010 and shall come into force on 19th March 2010

(2) The Portland Harbour Revision Order 1997(d) and this Order may be cited as the Portland Harbour Orders 1997 to 2010.

#### **Interpretation**

2.—(1) In this Order—

“the 1997 Order” means The Portland Harbour Revision Order 1997(e);

“authorised works” means the works authorised by this Order, or any part of such works;

“berthing faces” means any quay, wall or pontoon alongside of which vessels berth;

“Chart Datum” in relation to any depth of dredging is 0.93 metres below Ordnance Datum (Newlyn);

“the Company” means Portland Harbour Authority Limited (previously called Portland Port Limited);

“the controlled area” shall have the meaning given to it in the 1997 Order;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections (numbered sheets HRO1 to HRO9) prepared in duplicate, signed by the Head of Ports Division in the Department for Transport and marked “Plans and sections The Portland Harbour Revision Order 2010” of which one copy has been deposited at the offices of the Secretary of State for Transport and the other at the principal office of the Company at Portland Port, Castletown, Portland, Dorset DT5 1PP;

“the harbour” means Portland Harbour;

“harbour premises” shall, subject to paragraph (5) below, have the meaning given to it in the 1997 Order;

“harbour undertaking” means the undertaking of the Company authorised by the 1997 Order;

“level of high water” means the level of mean high-water springs;

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(a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56) section 18 and Schedule 6, paragraphs 2, 3, 4(1) and 14, section 40 and Schedule 12 Part II and by the Transport and Works Act 1992 (c. 42) section 63(1) and Schedule 3, paragraph 1, and by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 (S.I. 2006/1177) regulation 1(2) and Schedule, Part 1. See also the Criminal Justice Act 1982 (c.48), sections 37 and 46.

(b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(c) S.I. 1981/238 and S.I. 1997/2971.

(d) S.I. 1997/2949.

(e) S.I. 1997/2949. For the limits of Portland Harbour, see article 2.

“level of low water” means the level of mean low-water springs;

“limits of deviation” means the limits of deviation shown on the deposited plans;

“tidal work” means so much of any work as is on, under or over tidal waters or over tidal land below the level of high water; and

“Trinity House” means the Corporation of Trinity House of Deptford Strond.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order (other than the limits of deviation) 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, references to named, numbered or lettered breakwaters, heads of breakwaters, beacons, buildings, channels, coves, creeks, lights, piers and slipways, or other points, places, structures and apparatus are references to those so named, numbered or lettered on the Admiralty Charts.

(4) In this Order—

(a) any reference to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Order; and

(b) map reference points specified shall be construed as references to Ordnance Survey National Grid reference points.

(5) References in the 1997 Order to the harbour undertaking of the Company and to the harbour premises shall in each case be construed for all purposes as including references to any works carried on and any lands reclaimed by the Company or any of its subsidiaries under or by virtue of this Order.

## PART 2

### WORKS

#### **Power to construct, etc., works**

3.—(1) Subject to the provisions of this Order, the Company may (within the limits of deviation shown on the deposited plans and according to the levels shown on the deposited sections) construct and maintain the whole or part of the following work on and in the bed and foreshore of the harbour, together with all necessary works and conveniences connected with or incidental to them—

#### *Work No. 1*

New berthing faces generally to the north and east of New Quay and Coaling Pier Island by the construction of concrete blockwork quay walls and/or piled and suspended deck sections and/or rock armoured rubble mound retaining embankments on or within the area defined by lines drawn as follows—

(a) a line commencing at point North 50° 34.230', West 2° 26.408' and extending in an easterly direction for 710 metres to point North 50° 34.352', West 2° 25.838' (the “main berthing face”); and

(b) a second line commencing at the easternmost point of the said main berthing face and running perpendicular to it in a generally south-southeasterly direction to a point of intersection with an in-line extension of the face of Outer Coaling Pier and then in a generally westerly direction to the easternmost point of Outer Coaling Pier; and

(c) a third line commencing at westernmost point of the said main berthing face and running perpendicular to that line for 30 metres in a generally north-northwesterly direction and then turning at an angle perpendicular to the shoreward arm of Queen’s Pier for 30 metres to a point on the western face of Queen’s Pier and then turning to run along such western face to the most westerly point on New Quay.

*Work No. 2*

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 1 as lies within the limits of deviation and is required for, or in connection with, the authorised works.

*Work No. 3*

Two floating linkspans, with appropriate lengths of bridge and bankseat arrangements, guide piles and other securing and adjustment devices, commencing on the new northern and eastern faces of the berthing faces adjacent to the shoreward arm of Queen's Pier comprised within Work No. 1 each having an overall width of 30 metres.

*Work No. 4*

A mooring dolphin lying 70 metres to the east of the eastern face of Work No. 1, with bearing piles, mooring structures and reinforced concrete heads, connected to Works No. 1 by a steel access walkway.

*Work No. 5*

New berthing faces generally to the east of New Quay and Coaling Pier Island by the construction of concrete blockwork quay walls and/or piled and suspended deck sections and/or rock armoured rubble mound retaining embankments on or within the area defined by a line commencing on the most easterly point on the copeline at Boat Lift Jetty and proceeding in a generally easterly direction for approximately 350 metres to point North  $50^{\circ} 34.147'$ , West  $2^{\circ} 25.940'$  then turning in a generally southerly direction terminating at the most easterly point on Admiral's Steps.

*Work No. 6*

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 5 as lies within the limits of deviation and is required for, or in connection with, the authorised works.

*Work No. 7*

New berthing faces and retaining structures to the south and west of Queen's Pier by the construction of concrete blockwork quay walls including piled and suspended deck sections and rock armoured rubble mound retaining embankments on or within the area defined by a line commencing at the southernmost point of the western face of Queen's Pier and proceeding for 24 metres as an inline extension of the said western face then turning in a line perpendicular to the line of Queen's Pier for 30 metres then turning again to run parallel to Queen's Pier for 94 metres and then turning at an angle of 11 degrees to run in a generally southerly direction to terminate on the northern kerbline of Castletown Road.

*Work No. 8*

Reclamation of so much of the foreshore and bed of the sea by means of Work No. 7 as lies within the limits of deviation and is required for, or in connection with, the authorised works.

*Work No. 9*

A floating linkspan, with appropriate length of bridge and bankseat arrangements, guide piles and other securing and adjustment devices, commencing on the eastern face of Work No. 7 and having an overall width of 30 metres.

*Work No. 10*

Within the controlled area, two lines of mooring dolphins up to 70 metres apart and each extending up to 250 metres in length, with bearing piles, mooring structures and reinforced concrete heads, connected for all or part of their lengths by steel access walkways and the permanent mooring at those dolphins of a floating dry-dock.

### *Work No. 11*

A reinforced concrete or steel pontoon providing access to and from Work No. 10 to and from any other part of the harbour premises as the Company shall consider appropriate with single tubular steel mooring piles, access ramps and retractable/lifting plates.

(2) The Company may construct and maintain the authorised works comprised in Works Nos. 1, 2, 5, 6, 7, 8, 10 and 11 in such stages and along such lines within the areas described and within the limits of deviation as the Company may from time to time deem appropriate.

(3) The Company may construct, maintain, remove and re-lay the authorised works comprised in Works Nos. 10 and 11 in such locations within the controlled area and within the limits of deviation as the Company may from time to time deem appropriate.

(4) The Company may from time to time within the limits of deviation alter, enlarge, replace, relay, extend or reconstruct temporarily or permanently the authorised works and may maintain the same as altered, enlarged, replaced, relayed, extended or reconstructed.

(5) Notwithstanding anything in any other enactment, the Company may, for the purpose of constructing the authorised works, dismantle, remove, deal with and dispose of the whole or any part or parts of the existing Castletown slipway that is currently used for shiprepair and related operations (but, for the avoidance of doubt, excluding the public slipway at Castletown) by Manor Marine, the trading name of MPI Services (UK) Limited, a company incorporated under the Companies Acts 1948 to 1967 (registration number 2590501) and whose registered office is at Unity Chambers, 34 High Street East, Dorchester, DT1 1HA, and the Company may similarly use the guide dolphins located east of Castletown Pier, Deep Water Berth, Inner Coaling Pier catwalk and dolphin, ML Jetty, Camber Jetty and Loading Jetty shown on the deposited plans; and any other structures lying within the limits of deviation and any public rights over the same shall be extinguished.

(6) The authorised works and the bed, banks and shores of the harbour on which the authorised works are constructed and any lands reclaimed shall for all purposes form part of the harbour undertaking of the Company and of the harbour premises and all enactments conferring rights, powers, privileges or immunities or imposing duties, obligations or liabilities upon the Company or its officers, and all byelaws for the time being in force in relation to the harbour undertaking or the harbour premises, shall, so far as relevant, apply to the authorised works and such bed, banks, shores and lands and may be enforced by the Company accordingly.

### **Power to deviate**

4. Subject to the provisions of this Order, in constructing the authorised works the Company may deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three metres upwards or to any extent downwards as may be found necessary or convenient.

### **Subsidiary works**

5.—(1) Subject to the provisions of this Order, the Company may from time to time, within the limits of deviation, erect, construct, lay down, place, remove, replace, work or use and maintain whether temporarily or permanently all such works, conveniences, appliances and apparatus and take such measures as it from time to time considers fit for the purposes of, or in connection with, or incidental to the construction, maintenance and use of the authorised works, including but not limited to, trial boreholes, abutments, booms, pontoons, fenders, ladders, tanks, pumps, conduits, pipes, pipelines, wires, mains, cables, rails, signals, conveyors, cranes, lifts, drops, loading racks, chiksan arms and other cargo handling equipment for solid, liquid or gas cargoes, lifting equipment, weighbridges, stairs, stagings, quays, jetties, piers, waterways, bridges, approaches, slipways, catwalks, landing places, berthing heads, dolphins, mooring posts, buoys, bollards, buildings, sheds, silos, tanks and storage tanks, repair and machine shops, offices, depots, car parks (including multi-storey), roads, walls, bunds, fences, gates, equipment, machinery, appliances, navigation marks and lights and including in particular—

- (a) construction of general and temperature controlled cargo transit sheds within the areas noted on the deposited plans as sheds or general cargo transit sheds;
- (b) construction of new or extended passenger and cruise terminals within the areas so described on the deposited plans, together with ancillary facilities including stores for baggage and general cargo;
- (c) construction of administration offices and workshops within the area described on the deposited plans as administration and workshops;
- (d) construction of marshalling yards, public moorings and public car parking within the areas so described on the deposited plans;
- (e) construction of ship repair, maintenance and rebuild facilities for all vessels in the harbour within the area so described on the deposited plans,

together with ancillary accesses, lighting, services and other facilities.

(2) In the course of erecting, constructing, laying down, placing, removing and replacing the authorised works the Company may carry out construction activity, including the temporary placing of plant and equipment, within the water adjoining the limits of deviation.

### **Period for completion of works**

6.—(1) Subject to paragraph (3), if the authorised works comprised in Works Nos. 1 and 2 have not been constructed so as to create new berthing faces measuring 350 metres in aggregate within 50 years from the coming into force of this Order or such extended time as the Secretary of State may, on the application of the Company allow, then, on the expiration of that period, or such extended time (as the case may be), the powers granted by this Order to the Company for constructing and maintaining the authorised works comprised in Works Nos. 1 to 4 (inclusive) shall cease except as to so much of them as is then substantially commenced.

(2) Subject to paragraph (3), if the authorised works comprised in Works Nos. 5 to 11 (inclusive) are not completed within 50 years from the coming into force of this Order or such extended time as the Secretary of State may, on the application of the Company allow, then, on the expiration of that period, or such extended time (as the case may be), the powers granted by this Order to the Company for constructing and maintaining such authorised works shall cease except as to so much of them as is then substantially commenced.

(3) Nothing in paragraph (1) or (2) shall apply to any works carried out under paragraph (4) of article 3 or article 5.

### **Works to be within the district of Weymouth and Portland**

7.—(1) On the accretion date, the area of the whole or so much of the works authorised by article 3 and article 5 as shall have been completed or substantially completed shall, to the extent that they are outside the area of Weymouth and Portland Borough Council, be annexed to and incorporated within—

- (a) the district of Weymouth and Portland;
- (b) the petty sessional division of Weymouth and Portland; and
- (c) the Underhill Ward.

(2) In this article, “accretion date” means whichever of the following dates first occurs, namely, the date when the works so authorised have been completed or the date when the powers conferred by article 4 shall cease to have effect.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841<sup>(a)</sup> until the Company has certified in writing to the Director General of Ordnance Survey that the authorised works have been completed.

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(a) 1841 c. 30.

### **Power to dredge**

8.—(1) Subject to the provisions of this Order, the Company may, for the purposes of constructing and maintaining the authorised works and to afford uninterrupted means of access to the authorised works and enabling their use at all states of the tide, from time to time deepen, dredge, scour, cleanse, alter and improve the bed, shores and channels of the harbour within an area not exceeding 35 metres in width adjacent to all berthing faces created as part of the authorised works to a depth of not more than 14 metres below Chart Datum (unless the Secretary of State shall otherwise approve in writing).

(2) The Company may as it thinks fit use, appropriate or dispose of any materials (other than wreck within the meaning of Part IX of the Merchant Shipping Act 1995(a)) from time to time dredged, taken or collected by it in the course of any such operations.

(3) No materials referred to in this article shall—

- (a) be disposed of in contravention of the provisions of any enactment relating to the disposal of waste; or
- (b) be deposited below the level of high water except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

### **Obstruction of works**

9. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of the authorised works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Tidal works not to be executed without approval of Secretary of State**

10.—(1) A tidal work shall not be constructed, altered, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.

(2) If a tidal work is constructed, altered, replaced or re-laid in contravention of this article or of any condition or restriction imposed under this article—

- (a) the Secretary of State may by notice in writing require the Company at its own expense to remove the tidal work or any part of it and restore its site to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may remove the tidal work or part of it and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

### **Provision against danger to navigation**

11.—(1) In case of injury to, or destruction or decay of, a tidal work or any part of it the Company shall as soon as reasonably practicable notify Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House shall from time to time direct.

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(a) 1995 c. 21.



(2) If the Company fails to notify Trinity House as required by this article or to comply in any respect with a direction given under this article, the Company shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Abatement of works abandoned or decayed**

12.—(1) Where a tidal work is abandoned or suffered to fall into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part of it, or to remove the work and restore its site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where an authorised work consisting—

- (a) partly of a tidal work, and
- (b) partly of works on or over land above the level of high water,

is abandoned or suffered to fall into decay and the works mentioned in sub-paragraph (b) are in such condition as to interfere or to cause reasonable apprehension that they may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include those works, or any portion thereof, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

#### **Survey of tidal works**

13. The Secretary of State may at any time, if he deems it expedient to do so, order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Company.

#### **Permanent lights on tidal works**

14.—(1) After the completion of a tidal work the Company shall at the outer extremity of such work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House shall from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Lights on tidal works during construction, etc.**

15.—(1) The Company shall at or near a tidal work during the whole time of the construction, extension, enlargement, alteration, replacement or re-laying of such work exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as the Secretary of State shall from time to time direct.

(2) If the Company fails to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Defence of due diligence**

16.—(1) In proceedings for an offence under articles 11, 14 or 15 it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

## PART 3

### MISCELLANEOUS AND GENERAL

#### **Disapplication of regulation 60 of the Conservation (Natural Habitats, &c.) Regulations 1994**

17.—(1) Regulation 60 of the Conservation (Natural Habitats, & c.) Regulations 1994(a) shall not apply to any planning permission which relates to the development authorised by this Order and which is granted by article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995(b) for the class of development described as permitted development in Part 11 of Schedule 2 to that Order.

(2) Paragraph (1) does not apply if and to the extent that the development—

- (a) does not form part of the plan and project which was subject to an appropriate assessment in accordance with regulation 48 of the Habitats Regulations in connection with the making of this Order; and
- (b) is not subject to a further consent, permission or authorisation by a competent authority as defined in the Habitat Regulations.

#### **Crown rights**

18.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular nothing in this Order authorises the Company to take, use, enter upon or in any manner interfere with, any land, hereditaments or rights of whatsoever description (including any part of the shore or bed of the sea or any other river, channel, creek, bay or estuary)—

- (a) 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, or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

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

#### **Saving for Trinity House**

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

#### **For the protection of the Environment Agency**

20. Nothing in this Order or in any enactment applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(c) or any byelaw made under that Act or the Land Drainage Act 1991(d) in relation to anything done under or in pursuance of this Order.

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(a) S.I. 1994/2716.

(b) S.I. 1995/418.

(c) 1991 c. 57; section 109 was amended by the Environment Act 1995 (c. 25), section 120 (1), Schedule 22, paragraph 128.

(d) 1991 c. 59.

### **For the protection of the Marine & Fisheries Agency**

21. Nothing in this Order or in any enactment applied by this Order shall prejudice or affect the operation of Part II of the Food & Environment Protection Act 1985(a) or any byelaw made under that Act in relation to anything done under this Order.

### **For the protection of the Ministry of Defence Noise Range**

22.—(1) In this article, references to the “noise testing range” shall mean the Ministry of Defence Noise Testing Range identified by paragraph 5(b) of Part II of Schedule 2 to the 1997 Order and references to “construction activities” shall mean piling, dredging, hammering (including the use of windy hammers), the use of reciprocating engines on support vessels or ashore where those engines are not on a vehicle or acoustically rafted bed, the use of generators and activities involving percussion equipment.

(2) The Company shall—

- (a) prohibit construction activities in connection with the authorised works from taking place during times when the noise testing range is being used for testing purposes provided that such times have been notified in writing to the Company no less than 28 days in advance; and
- (b) use all reasonable endeavours to prohibit construction activities in connection with the authorised works from taking place during times when the noise testing range is being used for testing purposes where less than 28 days notice has been given in respect of urgent operational requirements for testing.

(3) From the date of the completion of the works to extend the Outer Coaling Pier, every vessel berthed at the new berths on the Outer Coaling Pier and at the berths situated on the original north eastern arm of the Outer Coaling Pier shall be connected to shore side electricity during times when the noise testing range is being used for testing purposes.

(4) From the date of the completion of the works to extend the Outer Coaling Pier the Company will use reasonable endeavours during times when the noise testing range is being used for testing purposes to require all vessels berthed at the new berths on the Outer Coaling Pier and at the berths situated on the original north eastern arm of the Outer Coaling Pier to be moored in such a way as to ensure that their sterns are orientated in a south-west direction.

### **For the protection of defence related purposes**

23. Nothing in this Order shall prejudice or affect or derogate from the protections given to defence related purposes by article 56 of, and Schedule 2 to the 1997 Order.

Signed by authority of the Secretary of State for Transport

4th March 2010

*R C Bennett*  
Head of Ports Division  
Department for Transport

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(a) 1985 c. 48.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Portland Harbour Authority Limited to construct works at the harbour including quay walls, reclamation of land and facilitates permanent mooring of a floating dry-dock.

The deposited plans and sections can be inspected during normal working hours at the offices of the Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR and at the offices of the Company, Portland Port, Castletown, Portland, Dorset DT5 1PP.

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