
STATUTORY INSTRUMENTS

2011 No. 1347

The Yarmouth (Isle of Wight) Harbour Revision Order 2011

PART 3

MISCELLANEOUS AND GENERAL

Information for purpose of landing charges

20.—(1) When any passengers are embarked on or disembarked from a vessel within the harbour, the owner or master of the vessel, if requested to do so by the Commissioners, shall provide to the Commissioners in writing details of the number of persons embarked on, or disembarked from, the vessel so as to enable the Commissioners to determine whether any of the Commissioners' published landing fees or other charges are payable in respect of those persons in accordance with section 26(2) of the Harbours Act 1964 or any other enactment applicable to the harbour.

(2) A request made under paragraph (1) may apply to a single vessel movement or (in the case of a vessel which habitually uses the harbour) to every occasion upon which the vessel arrives at or departs from the harbour.

(3) The owner or master of a vessel in respect of which a request is made under paragraph (1) shall provide the details so requested within such period (being not less than 24 hours) after the arrival or as the case may be the departure of the vessel as may be specified by the Commissioners.

(4) Paragraph (1) shall not apply in relation to non-commercial vessels occupying moorings within the harbour under licences granted by the Commissioners pursuant to article 14 or 15, or to vessels occupying moorings under licences granted under article 15, or to vessels paying visitor berthing rates to the Commissioners.

(5) For the purposes of paragraph (4), "non commercial vessel" means any vessel used for sport or recreation other than a vessel which is carrying, or is available to carry, members of the general public for hire or reward.

(6) Any person who without reasonable excuse fails to comply with any requirement made under paragraph (1), or who in compliance with such a requirement provides any information which that person knows to be false, or recklessly provides information which is false in any material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Boarding of vessels

21. Any duly authorised officer of the Commissioners may, on producing if so required that officer's authority, enter and inspect a vessel in the harbour—

- (a) for the purposes (including the enforcement) of any enactment relating to the Commissioners or of any byelaw of the Commissioners or any general or special direction,;
or
- (b) to prevent or extinguish fire;

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

Obstruction of officers

22.—(1) Any person who—

- (a) intentionally obstructs or threatens an officer of the Commissioners acting in pursuance of this Order or in pursuance of any byelaw, direction or requirement made or given by the Commissioners;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information (including his name and address) which the officer may require for the purpose of the performance of the officer's functions,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Any person who in giving such information makes a statement which that person knows to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Notices

23.—(1) Subject to the following provisions of this article, and to the other provisions of this Order, a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, shall be in writing and may be served by post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) Where a person on whom a notice or other document is to be served has agreed in writing that service may be by email, or other electronic means, the Commissioners may employ this method of service until such time as the person informs them in writing that the person is no longer willing to receive notices or documents by email or by such other electronic means.

(4) For the purposes of section 7 of the Interpretation Act 1978(1) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if the person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the person's last known address at the time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) in the case of a notice or document to be served on any person as having an interest on, or as the occupier of, any land, it may be served by —
 - (i) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

- (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land;
 - (b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel, or handed to a member of the crew, unless it would not be reasonably practicable to exhibit the notice or document in this manner, or if the notice or document would not be likely to be seen if it were so exhibited;
 - (c) in the case of any notice or document served otherwise than under paragraph (5)(a) or (b), it may be served by displaying it at the office of the harbourmaster for the period of its duration.
- (6) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Execution of documents

24.—(1) Sections 44 and 45(1) of the Companies Act 2006(2) shall apply to the execution of documents by the Commissioners as though they were a company within the meaning of section 1(1) of that Act.

- (2) Sections 44 and 45(1) as so applied shall have effect—
- (a) as though for references to a director there were substituted references to a Commissioner;
 - (b) as though for references to every director of the company there were substituted references to every Commissioner; and
 - (c) as though for references to the secretary of a private company there were substituted references to the Chief Executive of the Commissioners or some other person authorised under paragraph 20 of Schedule 2 to the 2001 Order to act instead of the Chief Executive.

Provisions for protection of Sandhouse, etc.

25.—(1) The following provisions shall have effect for the protection of the owner unless otherwise agreed in writing between the Commissioners and the owner.

- (2) In this article—
- “the owner” means the owner for the time being of the freehold interest in the property;
 - “the property” means the property referred to in paragraph (c) of section 63 (for the protection of Major C.J. Alexander and others) of the 1931 Order, that is, the building or structure in the parish of Freshwater known as Sandhouse with the roadway leading thereto and to low-water mark and the dock, pier and slipway in connection therewith;
 - “section 63” means section 63 of the 1931 Order.

(3) Nothing in this Order affects prejudicially the rights conferred on the owner by section 63.

(4) Without prejudice to the generality of paragraph (3) the Commissioners shall not give any general direction under article 4, or set apart or designate any part of the harbour under article 18, in such a way as to affect prejudicially the rights conferred on the owner by section 63.

(5) Any dispute between the Commissioners and the owner under this article shall be determined in accordance with subsection (4) of section 63.

Provisions as to certain appeals

26.—(1) This article applies to any appeal under article 13 or article 15(9) by an applicant (“the applicant”) for a licence under article 11 or article 15, as the case may be.

(2) The applicant may bring an appeal within 28 days from the date on which the Commissioners give notice of their decision or the date on which they are under article 12(5) or 15(4) deemed to have refused the application, as the case may be.

(3) An appeal shall be made by notice in writing, stating the grounds of the appeal.

(4) A person who appeals to the Secretary of State shall at the same time send a copy of the person’s statement of appeal to the Commissioners and the Commissioners shall as soon as practicable afterwards furnish the Secretary of State with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(5) On an appeal the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions of the licence.

(6) The Commissioners shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (5).

Crown Rights

27.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any 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) may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

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

Amendment of 2001 Order

29.—(1) The 2001 Order shall be amended as follows.

(2) For articles 4 to 7 there shall be substituted the articles set out in Schedule 5 to this Order.

(3) In article 9(1)—

- (a) the words “or the Councils” in the first place in which they occur shall be omitted; and
- (b) for the words from “or the Councils” in the second place in which they occur to the end there shall be substituted “in accordance with article 4(3) to (6)”.

(4) In Schedule 2—

- (a) for the expression “article 4(2)(a) or (b)” wherever it occurs there shall be substituted the expression “article 4(1)(a)”;

- (b) in paragraph 11(4)(a), for “above” there shall be substituted “of this Order in the form in which they existed immediately before the Yarmouth (Isle of Wight) Harbour Revision Order 2011 came into force.”.

Repeal and revocation of enactments, etc.

- 30.**—(1) On the date of the coming into force of this Order—
- (a) the provision of the Act referred to in columns (1) and (2) of Part 1 of Schedule 6 to this Order shall be repealed to the extent specified in column (3) of that Part; and
 - (b) the provisions of the orders referred to in columns (1) and (2) of Part 2 of Schedule 6 to this Order shall be revoked to the extent specified in column (3) of the Part.
- (2) The repeals and revocations effected by paragraph (1) shall be subject to Part 3 of Schedule 6 to this Order.