

**2016 No. 151**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Newhaven Harbour Revision Order 2016**

*Made* - - - - - *5th February 2016*

*Laid before Parliament* *12th February 2016*

*Coming into force* - - - *7th March 2016*

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Newhaven Port and Properties Ltd has applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”) for a harbour revision order under section 14.

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 14(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

PART 1  
PRELIMINARY

**Citation and commencement**

1.—(1) This Order may be cited as the Newhaven Harbour Revision Order 2016 and shall come into force on 7th March 2016.

(2) The Act of 1863, the Act of 1878, the 1991 HRO and this Order may be cited together as the Newhaven Harbour Acts and Orders 1863 to 2016.

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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 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 1), 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) See S.I.2010/674.
- (c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).
- (d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

## Interpretation

### 2. In this Order —

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

“the Act of 1863” means the Newhaven Harbour and Ouse Lower Navigation Improvement Act 1863(b);

“the Act of 1878” means the Newhaven Harbour Improvement Act 1878 (as amended by the Newhaven Harbour Improvement Act 1882)(c);

“the Company” means Newhaven Port and Properties Limited;

“general direction” means a direction given or proposed to be given under article 4;

“the harbour” means Newhaven Harbour as comprised within the harbour limits, including the harbour premises;

“the harbour limits” means the limits of the harbour specified in article 3;

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

“the harbour premises” means the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied or administered by, the Company as part of their harbour undertaking;

“the harbour undertaking” means the undertaking of the Company authorised by the Newhaven Harbour Acts and Orders 1863 to 2016;

“the 1991 HRO” means the Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991(d);

“jet bike” means any personal watercraft propelled by a water-jet engine or other mechanical means of propulsion and steered either —

(a) by means of a handlebar operated linkage system (with or without a rudder at the stern);  
or

(b) by the person or persons riding the craft using their body weight for the purpose; or

(c) by a combination of the methods referred to in (a) and (b);

“special direction” means a direction given or proposed to be given under article 7;

“vessel” means a ship, boat, raft, pontoon or water craft of any description and includes non-displacement craft, jet bike, seaplane and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or any other amphibious vehicle, which in all cases is used or is capable of being used as a means of transportation, storage or access on or under the water; and

“works” means the carrying out of an activity involving construction or the alteration, renewal, extension, breaking up or demolition of a structure or vessel or an engineering, mining or other operation.

## The harbour limits

3.—(1) The limits of the harbour within which the Company exercises jurisdiction as a harbour authority and the powers of the harbour master may be exercised are –

(a) all tidal reaches of the Ouse river and estuary that are covered at the level of high water south of the parallel of latitude 50 degrees 48.20N (approximately 85m north of the

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(a) 1847 c.27.

(b) 1863 c.184.

(c) 1878 c.71. amended by 1882 c.78.

(d) S.I.1991/1257.

Energy Recovery Facility) and extending out to sea bounded within the co-ordinates set out in sub-paragraph (b);

- (b) from approximately the position of the southern extremity of Mill Drove at 50 degrees 46.95'N, 0 degrees 04.10'E; thence following an imaginary straight line in a southerly direction to a location at 50 degrees 45.00'N, 0 degrees 04.10'E thence following an imaginary straight line in a west north westerly direction to a location at 50 degrees 45.55'N, 0 degrees 00.75'E; thence following an imaginary straight line in a north easterly direction to a location at 50 degrees 46.50'N, 0 degrees 03.20'E; thence following an imaginary straight line in a north north westerly direction to a position at approximately the position of Burrow Head/Castle Hill Cliffs at 50 degrees 46.88'N, 0 degrees 00 03.00'E. (all coordinates in degrees, minutes and decimals of minutes and based on WGS 84 datum); and
- (c) the harbour premises, whether or not within the areas described in sub-paragraphs (a) and (b).

(2) The limits within which the Company exercises jurisdiction as a harbour authority and the powers of the harbour master are exercisable are described in paragraph (1) and shown edged in red on the harbour map.

(3) In the event of any discrepancy between the description of the limits of the harbour in paragraph (1) and the limits shown on the harbour map the description of the limits in that paragraph shall prevail over the harbour map.

(4) In this article-

“the harbour map” means the map prepared in triplicate, signed by the Chief Executive Officer of the Marine Management Organisation and marked “Newhaven Harbour Revision Order 2016”, of which two copies have been deposited at the offices of the Marine Management Organisation and one copy has been deposited at the office of the Company”;

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

“WGS84” means the World Geodetic System, revised in 1984 and further revised in 2004.

## PART 2

### HARBOUR REGULATION

#### *General and special directions*

#### **Power to give general directions as to use of the harbour, etc.**

4.—(1) The Company may, in accordance with the requirements of article 5, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons, the protection of property, and the prevention or amelioration of environmental harm in the harbour.

(2) A direction under this article may apply—

- (a) to all vessels or to a class or type of vessel; or
- (b) to persons designated in the direction; or
- (c) to the whole of the harbour or to a part; or
- (d) at all times or at certain states of the tide;

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b), (c) and (d).

(3) The Company may amend or revoke a direction given under paragraph (1).

(4) For the purposes of this article, “environmental harm” means significant harm to the health of living organisms or other interference with the ecological systems of which they form part.

## **Procedure for giving, amending or revoking general directions**

5.—(1) Subject to paragraph (7), if the Company proposes to give, amend or revoke a direction under article 4 it must-

- (a) give notice in writing of the proposal to the Chamber of Shipping and the Royal Yachting Association and to such other persons or organisations as it considers appropriate for the purposes of the application of this provision (“the designated consultees”);
- (b) consult with the designated consultees upon the proposal, including allowing a period of not less than 6 weeks from the date notice has been given by it to those consultees in accordance with sub-paragraph (a), for each of them to make written representations to the Company on the proposal;
- (c) have regard to any representations made by the designated consultees during that consultation;
- (d) give notice in writing to the designated consultees, following the consultation, as to whether the Company proposes to proceed with the proposal and, if so, specifying whether it is making any modifications to the proposal and its reasons for so doing; and
- (e) if the Company proposes to proceed with the proposal and any of the designated consultees has made representations against the proposal, invite each designated consultee who has made such representations, within 28 days from the date of the notice given to him under sub-paragraph (d) or such longer period as may be specified in that notice, to confirm in writing if they maintain an objection to the proposal.

(2) Where the Company has complied with the requirements of paragraph (1) in relation to a proposal to give, amend or revoke a direction, they may proceed to give, amend or revoke the direction if-

- (a) none of the designated consultees has made representations against the proposal;
- (b) none of the designated consultees, having made representations against the proposal, gives notice to the Company under paragraph (1)(e) maintaining an objection to the proposal; or
- (c) an objection to the proposal has been maintained but the requirements specified in paragraph (3) have been complied with.

(3) Where a designated consultee has given notice to the Company under paragraph (1)(e) that they maintain an objection to the proposal, the following procedure applies-

- (a) the issue must be referred to an independent person (“the adjudicator”) to be agreed between the Company and each of the designated consultees maintaining an objection to the proposal (“the parties”) or, failing agreement, appointed on the application of any such party by the President of the London Maritime Arbitrators Association;
- (b) the adjudicator must, so far as is reasonably practicable within three months of the referral, first provide a reasonable opportunity for each of the parties to make representations to or be heard by the adjudicator and then make a report in writing to the Company with findings and reasoned recommendations on the issue, a copy of which must also be provided by the adjudicator to the each of the other parties;
- (c) the Company must decide whether to proceed with the proposal having regard to the report and recommendations contained in the report of the adjudicator (but shall not be bound to give effect to the recommendations) and, once they have so decided, it must give notice in writing to the designated consultees of its decision and of the reasons for that decision.

(4) If the Company wishes to proceed with the proposal in a form materially different from both the form notified to the designated consultees under paragraph (1)(d) and that recommended by the adjudicator under paragraph (3)(b), it must proceed, unless the designated consultees otherwise agree in writing, as if the proposal were a new proposal to which paragraph (1) applies.

(5) Except as otherwise provided for in paragraph (3), an adjudicator appointed under that paragraph may determine the procedure for the making of representations and the conduct of any hearing under that paragraph.

(6) The costs incurred by the adjudicator and by each of the parties on any referral under paragraph (3) are to be paid by such one or more of the parties to the referral as the adjudicator may direct.

(7) Subject to paragraph (8) paragraphs (1) to (6) do not apply where the Company proposes in the interests of navigational safety to give, amend or revoke a general direction applying to vessels or persons-

- (a) in an emergency; or
- (b) for the purpose of making temporary provision for an intended activity or operation in the harbour which is expected to commence less than 4 months after the Company is notified of or otherwise becomes aware of it and to last not more than 28 days and which the Company considers it appropriate to make, after taking into account other activities and operations in the harbour which may be affected by it.

(8) Where pursuant to paragraph (7) the Company proceeds to give, amend or revoke a general direction without complying with paragraphs (1) to (6), it must-

- (a) give notice of the direction, amendment or revocation as soon as is practicable to those persons who would otherwise have been designated consultees had paragraph (1)(a) applied; and
- (b) if the direction, or amendment is to continue in force for a period of more than 3 months from the date of that notice or the revoked direction is not intended to be restored within that period, apply the procedures specified in paragraphs (1) (b) to (e) and (2) to (6) to the question of the retention of the direction or amendment or revocation of the direction with the following modifications-
  - (i) a reference in those paragraphs to the 'proposal' is to be read as a reference to the direction, amendment or revocation;
  - (ii) in paragraph (1)(b), for "sub-paragraph (a)" substitute "paragraph (8)(a)"; and
  - (iii) a reference in those paragraphs to the Company proceeding with a proposal is to be read as a reference to the Company determining that the direction or amendment should remain in force or the revoked direction should not be restored.

### **Publication of general directions**

6.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Company as soon as practicable once in a newspaper circulating in the locality of the harbour and shall state a place at which copies of the general direction, as to be given, amended or revoked, may be inspected.

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Company to be appropriate.

### **Special directions as to use of the harbour, etc**

7.—(1) The harbour master may give a direction which applies to a vessel within the harbour limits for one or more of the following purposes—

- (a) requiring compliance with a requirement made in or under—
  - (i) a general direction;
  - (ii) a provision of the Newhaven Harbour Acts and Orders 1863 to 2016; or
  - (iii) a byelaw or other enactment of local application to the harbour or to the Company;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (c) requiring the removal of a vessel from any part of the harbour if—
  - (i) it is on fire;

- (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life or property;
  - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other persons or vessels or the carrying on of business in the harbour;
  - (iv) it is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent to the harbour;
  - (v) its removal is considered by the harbour master to be necessary in order to ensure the safety of persons or the protection of property, flora or fauna or of any part of the harbour referred to in paragraph (4);
- (d) regulating the loading, discharging, storing or safeguarding of the cargo, fuel, water or stores of a vessel and the discharge of its business at the harbour;
  - (e) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
  - (f) regulating the speed of a vessel;
  - (g) regulating the use of the motive power of a vessel;
  - (h) prohibiting or restricting the use of fires, lights, pyrotechnics, fireworks, guns, explosive devices or lasers; or
  - (i) as to the discharge or use of ballast.
- (2) The harbour master may give a direction which applies to—
- (a) a person;
  - (b) all vessels; or
  - (c) all vessels of a particular class,
- within the harbour for one or more of the purposes in paragraph (1)(a).
- (3) The harbour master may give a direction which applies to a person within the harbour for the purpose in paragraph (1)(h).
- (4) A special direction may be given in the interests of the conservation of, or prevention of damage to, any part of the harbour where that part has been designated, or otherwise given special protection or status, under any enactment by reason of its natural beauty, fauna, flora or archaeological or geological or physiographical features or any other natural features.
- (5) A special direction may be given in a manner considered by the harbour master to be appropriate and, where it is in respect of a vessel, must be addressed to the master of that vessel.
- (6) Where a special direction is to be given which applies to a person, the harbour master must, where possible, specify a particular person to whom the direction is addressed, either by name or by a description sufficient to enable the person to be readily identified.
- (7) The harbour master may amend or revoke a special direction.

### **Failure to comply with directions**

**8.—**(1) A person who fails to comply with a general or special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **Enforcement of special directions**

**9.—**(1) Without prejudice to any other remedy available to the Company, if a special direction in respect of or applying to a vessel is not complied with within a reasonable time, the harbour master may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) Except in an emergency, the powers conferred by paragraph (1) may only be exercised at least 48 hours after the giving of the special direction.

(3) Expenses incurred by the Company in the exercise of the powers conferred by paragraph (1) above shall be recoverable by it as if they were a charge of the Company in respect of the vessel.

### **Master's responsibility in relation to directions**

**10.** The giving of a general direction or a special direction in respect of or applying to a vessel shall not diminish or in any other way affect the responsibility of the master of the vessel in respect of which the direction is given in relation to the vessel, to persons on board the vessel, to the cargo or to any other person or property.

### **General byelaws**

**11.—**(1) The Company may make byelaws for the efficient management and regulation of the harbour.

(2) Without prejudice to the generality of paragraph (1), the Company may, from time to time, make byelaws with reference to all or any of the following—

- (a) regulating the use of any works or facilities provided by the Company;
- (b) preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour and to any aids to navigation which are used in connection with the harbour;
- (c) regulating the conduct of all persons in the harbour, not being—
  - (i) members of a police force;
  - (ii) officers or servants of the Crown; or
  - (iii) members of a fire brigade,whilst in the exercise of their duties as such;
- (d) regulating the placing, maintenance and use of moorings within the harbour;
- (e) preventing and removing obstructions or impediments within the harbour;
- (f) regulating the launching of vessels from the harbour premises;
- (g) regulating or prohibiting the use in the harbour or on board any vessel therein of fires, lights, tobacco or any other substance, equipment, tools, pyrotechnics, fireworks, guns, explosive ordnance, lasers or any other appliances which the Company considers involve a risk of fire, explosion or chemical reaction;
- (h) prohibiting the use of, or regulating the use, movement, speed, placing, loading, unloading, driving or parking of, vehicles within the harbour premises;
- (i) requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the harbour;
- (j) regulating the navigation of vessels in the harbour and their entry into and departure therefrom and for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for benefit of, vessels using, navigating or mooring within the harbour;
- (k) regulating the embarkation of persons on, or their disembarkation from, vessels within the harbour;
- (l) prescribing the lights and signals to be exhibited or made —
  - (i) by vessels aground within the harbour;
  - (ii) by vessels or other devices used for marking obstructions within the harbour; and
  - (iii) at the entrance to a dock or at a wharf, pier or other work for assisting the navigation of vessels within the harbour;
- (m) prohibiting or regulating the discharge into the harbour of any material or substance;



- (n) regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, breakwater or other installation or structure of any kind within the harbour, from any vessel within the harbour or from the foreshore where such fishing interferes with the operation of the port or the safety of navigation in the harbour;
- (o) regulating or prohibiting bathing within the harbour;
- (p) regulating or prohibiting the use by vehicles of the foreshore within the harbour premises;
- (q) regulating the berthing, mooring and anchoring of vessels in any part of the harbour, and regulating the careening and beaching of vessels within the harbour premises;
- (r) regulating the use within the harbour of yachts, sailing boats, rowing boats, pleasure craft, windsurfers, personal watercraft and any other small craft;
- (s) regulating or prohibiting the activities within the harbour of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar recreational pursuits;
- (t) regulating the conveyance to and the laying down at or on the harbour premises of all goods intended for shipment;
- (u) regulating the control of animals within the harbour;
- (v) preventing the disposal of any waste matter except at places or in a manner prescribed by the Company;
- (w) regulating the conveyance, landing, laying down, discharge and removal of goods, gear, equipment, timber, logs, floats, or rafts of timber and other items within the harbour;
- (x) preventing damage or harm to the environment within the harbour;
- (y) regulating any activity within the harbour that might otherwise cause a nuisance to other harbour users;
- (z) regulating the exercise of the powers vested in the harbour master; and
- (aa) for the purposes specified in section 83 of the Act of 1847 to the extent that they are not expressly referred to in this paragraph.

(3) In this article “signals” includes sound signals.

(4) Byelaws made under this article may—

- (a) provide that a person contravening such a byelaw or a condition, requirement or direction imposed, made or given thereunder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale;
- (b) relate to the whole of the harbour or to any part thereof;
- (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles; and
- (d) otherwise make different provisions for different circumstances or cases.

(5) Where a person is charged with an offence under paragraph (4)(a), it shall be a defence for the person to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence;
- (b) that he had a reasonable excuse for his act or neglect; or
- (c) that the offence was not caused or facilitated by an act or neglect on his part or on the part of a person engaged or employed by him and that all reasonable steps were taken to prevent the commission of the offence.

(6) (a) The provisions of section 236(3) to (8) and (11) and 238 of the Local Government Act 1972(a) (which relate to the procedure for making, and evidence of, byelaws) shall apply to byelaws under this article; and those provisions in their application to such byelaws, shall have effect subject to the modification that for the references to a local authority there were substituted references to the Company.

- (b) Subsection (7) of the said section 236, in its application to such byelaws, shall (subject to sub-paragraph (c) below) be modified by the insertion of the words “with or without modifications” after the word “confirm” in the second place where that word occurs.
- (c) Where the confirming authority proposes to make a modification which appears to him to be substantial—
  - (i) he shall inform the Company and require it to take any steps which he considers to be necessary for informing persons likely to be concerned with the modification; and
  - (ii) he shall not confirm the byelaws until such period has elapsed as he thinks reasonable for the consideration of, and comment upon, the proposed modification by the Company and by any other persons who have, or are likely to have, been informed of it.
- (d) The said section 238, in its application to such byelaws, shall have effect subject to the modification that for the reference to the proper officer of the authority there were substituted a reference to the Secretary of the Company.
- (e) The confirming authority for the purposes of the said section 236 in its application to the Company shall be the Secretary of State.

### **Revocation of byelaws**

12.—(1) The Company may from time to time make byelaws for the revocation of byelaws under this Order or under any other provision of the Newhaven Harbour Acts and Orders 1863 to 2016 or under any other enabling powers.

(2) Byelaws made under this article shall be made under the common seal of the Company, and shall not have effect until the requirements of this article have been satisfied.

(3) Upon the byelaws having been made, notice of the same shall be given in one or more local newspapers circulating in the area where the byelaws apply.

(4) For at least one month after the making of the byelaws, a copy of the byelaws shall be deposited at the offices of the Company and shall at all reasonable hours be open to public inspection without payment.

(5) The Company must have regard to all representations received during the period when the byelaws have been made available for public consultation, in order to decide whether to confirm the byelaws, with or without amendment.

(6) A copy of the byelaws, when confirmed by the Company, must be printed and deposited at the offices of the Company, and must at all reasonable hours be open for public inspection without payment.

## **PART 3**

### **COMMERCIAL WORKBOATS**

#### **Restriction of commercial workboat services**

13.—(1) No person other than the Company shall in the harbour operate a commercial workboat service, or offer a vessel for use in the operation of a commercial workboat service, unless he is licensed so to do by the Company in pursuance of article 14, nor except upon the terms and conditions, if any, upon which the licence is granted pursuant to that article.

(2) Any person who contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of Part 3 a “workboat” is a vessel in commercial use other than for sport or pleasure and a commercial workboat service includes the provision of a workboat with crew for hire or reward in connection with commercial services within the harbour.

### **Licensing of commercial workboat services**

**14.**—(1) The Company may grant to any person a licence to operate a commercial workboat service (in this and the following articles referred to as “a licence”) in any part of the harbour.

- (2) The Company shall not be required to grant a licence if—
- (a) the provision of the service to which the licence application relates would give rise to the risk of congestion, obstruction or danger to navigation; or
  - (b) a comparable service is already being provided, whether by some other person already licensed under this article, or by the Company which adequately meets the needs of potential users; or
  - (c) the applicant is unsuitable to hold the licence, whether on account of misconduct by him, any employee or agent of his or (where the applicant is not an individual) by any person in control of or concerned with the management of the applicant, the qualifications held by the Master or crew, or for another sufficient reason.

### **Further provisions as to licences**

**15.**—(1) A licence may be granted pursuant to article 14 subject to such terms and conditions as the Company think fit including conditions—

- (a) as to the hours of operation of the commercial workboat service (including requirements as regards frequency of service);
- (b) as to the charges levied by the licensed operator of the commercial workboat service;
- (c) as to the minimum level of qualifications required for the master and crew;
- (d) requiring that the seaworthiness of the commercial workboat is evidenced by the production of a survey report to the satisfaction of the harbour master;
- (e) requiring the maintenance of a public liability insurance policy in relation to the vessels used for the purposes of the commercial workboat service; and
- (f) for ensuring compliance with requirements made by or under any enactment relating to the commercial workboat service or to the Company.

(2) A licence shall have effect for such period (which shall be specified in the licence) as the Company may determine.

(3) An application for a licence—

- (a) must be made in writing to the Company;
- (b) must include proposals for the hours of operation and the fares to be levied; and
- (c) must contain such information (including information about the applicant and the vessels to be used), and must be accompanied by such documents, as the Company may reasonably require.

(4) The Company must give notice to the applicant of their decision whether to grant the licence.

(5) If within three months from the date of the making of an application under paragraph (3) the Company do not give notice under paragraph (4), they shall be deemed to have refused the application.

(6) The Company may charge a reasonable fee for the grant of a licence.

(7) If the Company refuses to grant a licence which has been applied for it must give reasons in writing for its refusal.

(8) If the Company grants a licence upon terms or conditions or subject to modifications, it must give reasons in writing for the terms and conditions imposed or the modifications required.

### **Appeals in respect of licences**

**16.**—(1) If-

- (a) the Company has refused to grant a licence pursuant to article 14 and the applicant for the licence is aggrieved by the refusal; or
  - (b) the Company has granted a licence upon terms or conditions and the applicant is aggrieved by the Company's decision as to such terms or conditions; or
  - (c) the Company has granted a licence subject to modifications and the applicant is aggrieved by the modifications,
- the applicant may appeal in accordance with article 17.

### **Appeals procedure**

**17.—**(1) Where an applicant wishes to appeal pursuant to article 16 he must serve notice on the Company within 28 days of the date upon which the Company refused (or was deemed to have refused) to grant the licence, or granted it upon terms and conditions or subject to modifications.

(2) Upon receipt of a notice of appeal received under paragraph (1) the Company must refer the determination of the appeal to an independent person (the adjudicator) to be agreed between the Company and the applicant or, failing agreement, appointed on the application of the Company or the applicant by the President of the London Maritime Arbitrators Association.

(3) The adjudicator must, so far as is reasonably practicable within 28 days of the referral, first provide a reasonable opportunity for each of the parties to make representations to or be heard by the adjudicator and then make a report in writing to the Company with findings and reasoned recommendations on whether the licence should be granted and, if so, on what terms or conditions and subject to what modifications, a copy of which must also be provided by the adjudicator to the applicant.

(4) The Company must decide whether to act in accordance with the report and recommendations contained in the report of the adjudicator (but shall not be bound to give effect to the recommendations) and, once it has so decided, it must give notice in writing to the applicant of its decision and of the reasons for that decision.

(5) The costs incurred by the adjudicator and by each of the parties on any referral under paragraph (2) are to be paid by such one or more of the parties to the referral as the adjudicator may direct.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **General functions of the Company**

**18.—**(1) The Company may, subject to the provisions of this Order, take all such steps from time to time as it may consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and the facilities (including recreational facilities) afforded therein or in connection therewith, and in the interests of the conservation of, or prevention of damage to, any part of the harbour where that part has been designated, or otherwise given special protection or status, under any enactment by reason of its natural beauty, fauna, flora or archaeological or geological or physiographical features or any other natural features.

(2) Without prejudice to the generality of the foregoing, for those purposes the Company may –

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein;
- (b) subject to obtaining the necessary rights in or over land –
  - (i) execute and place in and over the harbour such structures, works and equipment as are required; and

- (ii) operate, maintain, renew, alter, extend, demolish and reconstruct structures, works and equipment in the harbour (including those executed or placed pursuant to sub-paragraph (i) above); and
  - (c) do all other things which are expedient to facilitate the operation, improvement or development of the harbour undertaking.
- (3) The Company must, from time to time, formulate and publish a management plan in relation to their maintenance, conservation, operation, management and improvement of the harbour undertaking.
- (4) In the exercise of the powers of sub-paragraph (2)(b), the Company must not –
- (a) interfere with, damage or otherwise injuriously affect apparatus belonging to or maintained by a statutory undertaker; or
  - (b) do anything which will obstruct or impede work relating to the inspection or repair of such apparatus,
- without the consent of the statutory undertaker concerned.

### **Incorporation of the Harbours, Docks and Piers Clauses Act 1847**

**19.**—(1) The Act of 1847 (except sections 6 to 25, 31, 32, 42, 48, 50, 67 and 83 to 90), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is hereby incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Sections 61, 62, 64, 66, 71, 72 and 73 shall have effect subject to the modification that for the words "level 1 on the standard scale" there are substituted the words "level 3 on the standard scale".

(3) Section 63 shall have effect subject to the modification that for the words after "he shall be" to the end of the section there are substituted the words "be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale".

(4) Section 69 shall have effect subject to the modification that for the words after "fail so to do" 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".

(5) Section 78 shall have effect subject to the modification that for the words "erect any lighthouse or beacon, or exhibit or allow to be exhibited any light, beacon, or sea-mark," there are substituted the words "allow to be exhibited any permanent light, beacon, or sea-mark,".

(6) In construing the provisions of the Act of 1847 as incorporated with this Order –

- (a) the expression "the special Act" means this Order, the expression "the undertakers" means the Company and the expression "the harbour, dock, or pier" shall mean the harbour, the breakwaters and those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
- (b) for the definition of the word "vessel" in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2 of this Order;
- (c) the reference in section 53 of the Act of 1847 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.

### **Borrowing powers**

**20.**—(1) Notwithstanding anything contained in any enactment, the Company may from time to time, for the general purposes of the harbour undertaking, borrow upon the security of all or any of its revenues and property and by any method or methods which it sees fit such sums of money as it considers necessary.

(2) Moneys borrowed under paragraph (1) may be applied only to purposes to which capital money is properly applicable.

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

- (a) any major works of repair or maintenance of any part of the works forming part of the undertaking;
- (b) the payment of any interest falling due within the five years immediately following the date of the borrowing of any sum of money borrowed by the Company under this article;
- (c) the repayment within 12 months from the date of borrowing of any sum for the time being outstanding by way of principle on any amount previously borrowed; and
- (d) a payment relating to pensions paid or to be paid to past or present employees of the Company or to the family or dependants of such persons.

### **Power to charge interest to capital**

21. Where the Company, in the exercise of powers conferred upon it by any enactment, commences any work or operations, it may, during such period not exceeding five years from the commencement of the work or operations as it may determine, charge to capital as part of the cost of the work or operations interest on any money raised to defray –

- (a) the cost of the acquisition of any lands for the purpose of the work or operations; and
- (b) the expenses of constructing or carrying out the work or operations.

### **Temporary borrowing powers**

22. The Company may borrow temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations or discharging its functions.

### **Power to grant tenancies and to dispose of land**

23.—(1) The Company may, for the purposes of or in connection with the management of the harbour undertaking, dispose of, lease or grant the use or occupation of, or any right or interest in or over, any land, works, buildings, machinery, equipment or other property forming part of the harbour premises for such period, at such rents and other considerations and on such terms and conditions as shall be agreed between the Company and the person taking the same.

(2) The Company may also dispose of, or grant the use or occupation of, any property held by it for the purpose of the harbour undertaking, which it considers to be surplus to that required by it for the purposes of the harbour undertaking.

### **Commercial activities**

24.—(1) The Company may carry on a trade or business of any kind that conduces to the efficient and economical performance by the Company of the management of the harbour including a trade or business carried on in conjunction with another person.

(2) Without prejudice to the generality of paragraph (1) the Company may invest in and promote, or join with any other person in forming, investing in and promoting, companies for investing in, using or developing for any purpose, or for carrying on any trade or business in, the harbour.

### **Harbour services and facilities**

25.—(1) The Company shall have power, within the confines of its statutory duties, to provide, maintain, operate and improve such harbour services and facilities in, or in the vicinity of, the harbour as it may consider necessary or desirable and to take such action as it considers incidental to the provision of such services and facilities.

(2) No other provisions of the Newhaven Harbour Acts and Orders 1863 to 2016 shall prejudice or derogate from the generality of paragraph (1).

### **Boarding of vessels**

**26.** Any duly authorised officer of the Company may, on producing written authority signed by the harbour master, enter and inspect a vessel in the harbour —

- (a) for the purposes of any enactment relating to the Company or of any byelaw of the Company or any general or special direction, including the enforcement thereof; or
- (b) to prevent or attend to any incident that is likely to cause injury to persons or damage to property or the environment if left unattended,

but, except in an emergency, no entry shall be made under this article without prior notice having been given to the owner or the person appearing to have charge of the vessel at least 48 hours before the entry and the notice shall have annexed to it a copy of this article.

### **Information for the purpose of landing charges**

**27.—(1)** When passengers are embarked on or disembarked from, or cargo is loaded onto or unloaded from, a vessel within the harbour the owner or master of the vessel, if requested to do so by the Company, must provide to the Company details in writing of the number of persons embarking on or disembarking from the vessel and the weight, quantity, volume and composition of cargo being loaded onto or unloaded from the vessel so as to enable the Company to determine whether any of the Company's published landing fees or other charges are payable in respect of those persons or cargo, in accordance with section 26(2) of the Harbours Act 1964 or other legislation 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) must provide the details so requested within such period (being not less than 24 hours) after the arrival of the vessel as may be specified by the Company, and in any event prior to the departure of the vessel.

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

(5) For the purposes of paragraph (4) "non-commercial vessel" means a 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) A person who, without reasonable excuse, fails to comply with a requirement made under paragraph (1) in accordance with paragraph (3), or who in compliance with such a requirement provides information which he knows to be false, or recklessly provides information which is false, in a material particular, is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Obstruction of officers**

**28.—(1)** A person who —

- (a) intentionally obstructs or threatens an officer of the Company acting in pursuance of the performance of his functions; or
- (b) without reasonable excuse fails to give such an officer any information (including his name, address, telephone number and email address) which the officer may require for the purpose of the performance of his functions,

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

(2) A person who in giving such information makes a statement which he knows to be false, or recklessly provides information which is false, in a material particular is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Crown rights**

**29.**—(1) Nothing in this Order shall-

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the undertaker to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any part of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to —
  - (i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the prior consent in writing of those Commissioners; or
  - (ii) 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)(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**

**30.** Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of the Corporation of Trinity House of Deptford Strond.

### **Notices**

**31.**—(1) Without prejudice to the discretion of the harbour master under article 7(5) and 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, must be in writing and may be served by first class 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 Company may employ this method of service until such time as the person informs it in writing that he 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(a) as it applies for the purposes of this article, the proper address of a person in relation to the service on him of a notice or document under paragraph (1) is, if he 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, his 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 a person as having an interest in, or as the occupier of, any land, it may be served by —

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(a) 1978 c.30.



- (i) addressing it to him 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 (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) or by handing it to a member of the crew;
- (c) in the case of any other notice or document or a notice or document that is not capable of being served pursuant to sub-paragraph (b) it may be served by displaying it at the office of the harbour master 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.

Signed by authority of the Marine Management Organisation

5th February 2016

*John Tuckett*  
Chief Executive Officer

An authorised employee of the Marine Management Organisation

#### **EXPLANATORY NOTE**

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

This Order-

- (a) defines the limits of Newhaven Harbour (article 3);
- (b) in Part 2 confers on Newhaven Port and Properties Limited (“the Company”) and the harbour master (defined in article 2) powers of direction for the regulation and management of the harbour (articles 4 to 10) and on the Company powers to make or revoke byelaws (articles 11 and 12);
- (c) in Part 3 provides for the licensing of commercial workboat services;
- (d) in Part 4-
  - (i) specifies the general functions of the Company in respect of the harbour (defined in article 2) (article 18);
  - (ii) incorporates certain provisions of the Harbours, Docks and Piers Clauses Act 1847 (1947 c.27) (article 19);
  - (iii) confers borrowing powers on the Company (article 20 and 22);
  - (iv) enables the Company to charge interest to capital in certain circumstances (article 21);
  - (v) enables the Company to grant tenancies and dispose of land and other property for the purpose of or in connection with the management of the harbour undertaking or if it is not required for the purposes of the harbour undertaking (defined in article 2) (article 23);
  - (vi) enables the Company to carry out certain commercial activities (article 24);

- (vii) confers on the Company powers in respect of harbour services and facilities (article 25)
- (viii) establishes the conditions for a duly authorised officer of the Company to board a vessel (defined in article 2) for certain purposes (article 26);
- (ix) empowers the Company to require information in writing from the owner or master of a vessel embarking or disembarking passengers, or loading or unloading cargo, within the harbour for the purposes of determining whether landing charges are payable and creates an offence of failing to provide such information or knowingly or recklessly providing false information, the penalty for which on summary conviction is a fine not exceeding level 4 on the standard scale (article 27);
- (x) creates an offence of intentionally obstructing or threatening, or without reasonable excuse failing to give certain information to, an officer of the Company, or of knowingly or recklessly giving false information to such an officer, for which the penalty on summary conviction of any such offence is a fine not exceeding level 4 on the standard scale (article 28).

A full assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

The harbour map (defined in article 3(4)) which delineates the limits of the harbour (article 3(2)) may be inspected during working hours at the principal office of the Company at the Harbour Office, East Quay, Newhaven Harbour, Newhaven, East Sussex, BN9 0BN.

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