
STATUTORY INSTRUMENTS

2021 No. 43

The Weymouth Harbour Revision Order 2021

PART 5

GENERAL DIRECTIONS, SPECIAL DIRECTIONS AND BYELAWS

Power to make byelaws

20.—(1) The Council may make such byelaws as it thinks fit for the efficient management and regulation of the harbour.

(2) Without prejudice to paragraph (1), the Council may make byelaws under this article for any of the purposes set out in Schedule 1 but such byelaws shall not come into operation until the same have received the allowance and the confirmation of the Secretary of State which shall be sufficient for all purposes.

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

(4) Byelaws made under this article may—

- (a) provide for imposing upon a person offending against them, or against any condition, requirement or direction imposed, made or given thereunder, a fine not exceeding level 4 on the standard scale on summary conviction;
- (b) relate to the whole of the harbour or to any part thereof;
- (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles; and
- (d) otherwise make different provision for different circumstances.

(5) Where a person is charged with an offence against a byelaw in force under this article, it shall be a defence for the person to prove—

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

(6) The provisions contained in subsections (3) to (8) of section 236 (Procedure etc., for byelaws) and section 238 (Evidence of byelaws) of the Local Government Act 1972(1) (which relates to the procedure etc. for byelaws and evidence of byelaws) shall apply to any byelaws made by the Council under this article; and those provisions, in their application to any such byelaws, shall have effect.

Power to make general directions as to use of harbour, etc.

21.—(1) The Council may, in accordance with the requirements of article 22, give or amend a direction for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora and fauna in the harbour.

(2) A direction under this article may apply—

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

and every direction must specify the extent of its application including its geographical extent in relation to the matters referred to in sub- paragraphs (a), (b), (c) and (d).

(3) The Council must keep and make available at its harbour office and on its harbour website a public register of all in force general directions.

(4) The Council may revoke a direction given under paragraph (1).

Procedure for giving, amending or revoking general directions

22.—(1) Subject to paragraph (7), if the Council propose to give, amend or revoke a general direction, it must—

- (a) give notice in writing of the proposal to the “designated consultees” them being;
 - (i) the Chamber of Shipping,
 - (ii) the Royal Yachting Association,
 - (iii) any advisory body created pursuant to article 28 of this Order and to
 - (iv) such other persons or organisations as it considers appropriate for the purposes of the application of this provision,
- (b) place a notice of the proposal on the Council’s website and in prominent locations around the harbour from the same date as the notice given in accordance with sub-paragraph (a) above and keep those notices on display for a minimum of 6 weeks;
- (c) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks from the date of the notice given in accordance with sub-paragraphs (a) and (b) for written representations to be made by the designated consultees and any other persons to the Council regarding the proposal;
- (d) have regard to all representations made during consultation;
- (e) give notice in writing to the designated consultees and to those other persons that have provided a consultation response following consultation as to whether the Council 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
- (f) if the Council proposes to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days beginning with the date of the notice given in accordance with sub-paragraph (e), or such longer period as the Council may specify.

(2) Where the Council has complied with paragraph (1), it may proceed to give, amend or revoke a general direction if—

- (a) none of the designated consultees have made representations against the proposal;

- (b) none of the designated consultees which have made representations against the proposal has confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(f); or
 - (c) where a designated consultee has maintained an objection in accordance with paragraph (1)(f), the requirements of paragraph (3) have been complied with.
- (3) Where a designated consultee has confirmed in writing to the Council that they maintain their objection to a proposal—
- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
 - (i) by agreement between the Council and each designated consultee maintaining an objection in accordance with paragraph (1)(f) (“the parties”); or
 - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties;
 - (b) so far as is reasonably practicable within 12 weeks beginning with the date of the referral, the adjudicator must—
 - (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing, and
 - (ii) make a written report to the parties with findings and recommendations on the issue, and
 - (c) the Council must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator’s report (but it is not bound to give effect to any recommendations) and, once it has decided, must give notice in writing to the designated consultees and to any other persons that have provided a consultation response of its decision and the reasons for that decision.
- (4) Except as otherwise provided for in paragraph (3), the adjudicator may determine the procedure for the making of representations and the conduct of any hearing.
- (5) The costs incurred by the adjudicator and the parties from a referral under paragraph (3) are to be paid by one of more of the parties as the adjudicator may direct.
- (6) If the Council wishes to exercise the power to give, amend or revoke a general direction in a form materially different from both the form notified to the designated consultees and to any others that have provided a consultation response under paragraph (1)(e) and where paragraph (3) applies the form recommended by the adjudicator under paragraph (3)(b), it must proceed as if the proposal is a new proposal to which paragraph (1) applies.
- (7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety or safety of persons the Council proposes to give or amend a general direction—
- (a) in an emergency; or
 - (b) relating to an intended activity or operation within the harbour which—
 - (i) is expected to commence within 16 weeks of the Council having been notified or otherwise becoming aware of the intended activity or operation;
 - (ii) is to last less than 28 days, and
 - (iii) the Council considers that the giving or amending of a general direction in relation to that activity or operation is required, taking into account other activities or operations in the harbour which may be affected.
- (8) Where the Council proceeds to give or amend a general direction in accordance with paragraph (7), it must—
- (a) as soon as is reasonably practicable give notice of the direction or amendment to those persons who would have been designated consultees had paragraph (1)(a) applied; and

- (b) if the direction or amendment is intended to continue in force for more than 12 weeks, apply the procedure under paragraphs (1)(c) to (f) and (2) to (6) to the direction or amendment with the following modifications—
- (i) a reference to the ‘proposal’ in those paragraphs is to be read as a reference to the direction or amendment; and
 - (ii) a reference to the Council ‘proceeding’ with a proposal is to be read as a reference to the Council determining that the direction or amendment should remain in force.

Publication of general directions

23.—(1) Subject to paragraph (4), the Council must publish a notice of the giving, amendment or revocation of a general direction as soon as reasonably practicable on one occasion in a newspaper circulating in the locality of the harbour and electronically on the Council’s website for the period of 28 days beginning with the day on which the notice is published in the newspaper.

(2) The notice must state a place at which copies of the general direction may be inspected.

(3) The Council must display notices of general directions that apply to harbour premises at prominent locations within the harbour.

(4) In an emergency, the Council may give notice of the giving or amendment of a general direction in any manner which it considers to be appropriate.

Special directions

24.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the harbour for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) prohibiting or restricting the use of fires or lights;
- (f) regulating the use of ballast;
- (g) requiring the removal of the vessel from any part of the harbour if the vessel—
 - (i) is on fire;
 - (ii) is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property;
 - (iii) is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons or the dispatch of business in the harbour ; or
 - (iv) needs to be removed to enable maintenance or repair work to be carried out to the harbour premises;
- (h) requiring the vessel be removed to a place outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

Failure to comply with directions

25.—(1) A person who fails to comply with a general direction or a 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) above, it shall be a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Enforcement of directions

26.—(1) Without prejudice to any other remedy available to the Council, if a special direction 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) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found; or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

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

Master's responsibility in relation to directions

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