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STATUTORY INSTRUMENTS

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**2016 No. 151**

**The Newhaven Harbour Revision Order 2016**

**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.