
STATUTORY INSTRUMENTS

2021 No. 139

The Newport (Isle of Wight) Harbour Revision Order 2021

PART 4

MISCELLANEOUS AND GENERAL

General Functions of the Council

11.—(1) The Council 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, the harbour premises and the facilities (including recreational facilities) afforded to it or in connection with, and for the conservation of, the harbour's flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without prejudice to the generality of the foregoing, the Council may—

- (a) improve, maintain, regulate, manage, dredge, mark and light the harbour and the harbour premises and provide harbour facilities;
- (b) subject to obtaining the necessary rights in or over land—
 - (i) execute and place in and over the harbour and the harbour premises 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 and the harbour premises (including those executed or placed pursuant to paragraph (i) above);
- (c) do all other things which in its opinion are expedient to facilitate the operation, management, improvement or development of the harbour undertaking.

(3) The Council shall, from time to time, formulate and publish a management plan⁽¹⁾ 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) above, the Council must not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker, or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus, without the consent of the statutory undertaker concerned.

Incorporation of the Act of 1847

12.—(1) The Act of 1847 (except sections 6 to 26, 28, 31, 33, 49, 50, 53, 54, 66, 67, 75, 76, 79 and 80), so far as applicable to the purposes and not inconsistent with the provisions of this Order, is incorporated with each of the Newport Harbour Provisions 1852 to 2021 subject to the modifications in paragraphs (2) to (5) below.

(1) The management plan is available on www.iow.gov.uk and a hard copy may be inspected during normal office hours at the Council's main office at County Hall, High Street, Newport, Isle of Wight PO30 1UD.

(2) Sections 61, 62, 63, 64, 71, 72 and 73 shall have effect subject to the modification that for “level 1 on the standard scale” substitute “level 3 on the standard scale”.

(3) Section 69 shall have effect subject to the modification that for “shall forfeit” to the end of the section substitute “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) Section 78 shall have effect subject to the modification that for “erect any lighthouse or beacon, or exhibit or allow to be exhibited any light, beacon, or sea-mark,” substitute “allow to be exhibited any permanent light, beacon, or sea-mark,”.

(5) In interpreting 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” shall mean the Council and the expression “the harbour, dock, or pier” shall mean the “harbour” as defined by article 2(1) of this Order;
- (b) for the definition of the word “vessel” in section 3 of the Act of 1847 substitute the definition of that word in article 2(1) of this Order;
- (c) The provisions of this article shall supersede any provisions of the Act of 1852, the Order of 1898, the Order of 1968 and the Order of 1988 which incorporate the Act of 1847 or any part or provision of that Act.

Power to grant tenancies and to dispose of land

13.—(1) The Council 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 for such other considerations and on such terms and conditions as shall be agreed between the Council and the person taking the same.

(2) The Council may also—

- (a) dispose of;
- (b) appropriate to another use for which the Council has statutory powers; or
- (c) 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 them for the purposes of the harbour undertaking.

Commercial Activities

14.—(1) The Council may carry on a trade or business of any kind that is conducive to the efficient and economical performance by the Council 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 Council 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.

Information for the purpose of landing charges

15.—(1) When any passengers are embarked on or disembarked from or cargo loaded onto or unloaded from a vessel within the harbour the owner or master of the vessel, if requested to do so by the Council, shall provide to the Council 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 Council to determine whether any of the

Council's published landing fees or other charges are payable in respect of those persons or cargo, in accordance with section 26(2) of the Act.

(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 of the vessel as may be specified by the Council, 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 Council, nor to vessels paying visitor berthing rates to the Council.

(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—

- (a) fails to comply with any requirement made under paragraph (1), or
- (b) who in compliance with such a requirement provides any information which they know 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.

Obstruction of officers

16.—(1) Any person who—

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

Crown Rights

17.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown, or
- (b) authorise any person to take, use, enter upon or in any manner interfere with, any land or interest in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any, 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

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

Notices

19.—(1) Except where this Order expressly provides otherwise 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 must 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 Council may employ this method of service until such time as the person informs it in writing that they are 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(2) as it applies for the purposes of this article, the proper address of any person in relation to the service on them of a notice or document under paragraph (1) is, if they have 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, their 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 them 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, and
- (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.

Amendment and repeal

20.—(1) The Order of 1988 is amended as follows.

- (2) In article 2 (interpretation)—
- (a) in the definition of “harbour” for “the inland tidal waters and creeks forming part of the River Medina in the borough shown coloured grey on the signed map being the harbour as it existed immediately before the making of this Order but excluding the Western Creek beyond the confluence of the River Medina with the Lukely Brook at the weir south of the bridge carrying the Medina Way over the River Medina and including the harbour estate” substitute the definition of “harbour” in article 2 (interpretation) of this Order;
 - (b) in the definition of “vessel” for “includes any vessel, ship, lighter, keel, barge, boat, raft, pontoon, hovercraft (as defined by the Hovercraft Act 1968)(3) and craft of any kind howsoever navigated, propelled or moved and any seaplane on the surface of the water and in article 11 (Powers with respect to disposal of wrecks) and article 12 (protection of Crown interests in wrecks) of this Order any aircraft” substitute the definition of “vessel” in article 2 (interpretation) of this Order.
- (3) In article 8 (As to houseboats)—
- (a) in paragraph (2)(d) after “at reasonable cost” insert “or in a manner that is reasonably acceptable to the Council”;
 - (b) after paragraph (2)(e) insert “(f) that by virtue of its condition, appearance or state of repair the houseboat is likely to have a detrimental impact on the amenities of the harbour”;
 - (c) in paragraph (4)(a) for “£400”, substitute “level 3 on the standard scale”.
- (4) The 1968 Order is amended as follows.
- (5) In article 6(2)—
- (a) For the colon substitute a full stop, and
 - (b) omit “Provided that a charge shall not be payable under this paragraph in respect of any vessel in any case where all appropriate dues have been paid to the Corporation”.