

2021 No. 139

HARBOURS, DOCKS, PIERS AND FERRIES

The Newport (Isle of Wight) Harbour Revision Order 2021

<i>Made</i> - - - -	<i>9th February 2021</i>
<i>Laid before Parliament</i>	<i>16th February 2021</i>
<i>Coming into force</i> - -	<i>10th March 2021</i>

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2

HARBOUR LIMITS

3. The Harbour Limits

PART 3

HARBOUR REGULATION

4. Power to make general directions as to use of harbour, etc.
5. Procedure for giving, amending or revoking general directions
6. Publication of general directions
7. Special directions as to use of the harbour, etc.
8. Failure to comply with directions
9. Enforcement of special directions
10. Master's responsibility in relation to directions

PART 4

MISCELLANEOUS AND GENERAL

11. General Functions of the Council
12. Incorporation of the Act of 1847
13. Power to grant tenancies and to dispose of land
14. Commercial Activities
15. Information for the purpose of landing charges

16. Obstruction of officers
17. Crown Rights
18. Saving for Trinity House
19. Notices
20. Amendment and repeal

The Isle of Wight Council has applied for a harbour revision order in accordance with section 14 of the Harbours Act 1964(a)(“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of that section 14, has by an Order(b) made under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 14(d) of the Act to the Marine Management Organisation(e).

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

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Newport (Isle of Wight) Harbour Revision Order 2021 and shall come into force on 10th March 2021.

(2) The Act of 1852, the Order of 1898, the Order of 1988 and this Order may be cited together as the Newport Harbour Provisions 1852 to 2021.

Interpretation

2.—(1) For the purposes of the Newport Harbour Provisions 1852 to 2021—

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

“the Act of 1852” means the River Medina Navigation Act 1852(g);

“the Order of 1898” means the River Medina Navigation Order 1898(h);

“the Order of 1968” means the Newport (Isle of Wight) Harbour Revision Order 1968(i);

“the Order of 1988” means the Newport (Isle of Wight) Harbour Revision Order 1988(j);

(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 I), by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) 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) S.I. 2010/674.

(c) Section 42A was inserted, in relation to England and Wales, by section 315 of, and paragraphs 1 and 3(1) of Schedule 21 to, the Marine and Coastal Access Act 2009 (c. 23).

(d) For the definition of “the Minister”, see section 57(1) of the Harbours Act 1964 (c. 40).

(e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23).

(f) 1847 c. 27.

(g) 1852 (15 & 16 Vict.) Cap. cxi.

(h) 1898 (61 & 62 Vict.) ch. cci. The River Medina Navigation Order 1898 is included in the Pier and Harbour Orders Confirmation (No.2) Act, 1898 in the Schedule of Orders. The Order is for amending the River Medina Navigation Act 1852 and for other purposes connected with the River Medina Navigation.

(i) S.I. 1968/1084.

(j) S.I. 1988/2304.

“the Council” means the Isle of Wight Council;

“the delineated limits” means the area defined in article 3(1)(a);

“general direction” means any direction given under article 4;

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

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

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

“harbour premises” means land adjacent to the delineated limits, or separated only by a road or other access, for the time being vested in, or occupied or administered by the Council as part of the harbour undertaking and occupied wholly or mainly for the purpose of activities there carried on; which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, sheds, other buildings and all other works and conveniences, land and premises;

“harbour undertaking” means the undertaking of the Council authorised by the Newport Harbour Provisions 1852 to 2021;

“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);
- (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 respectively in (a) and (b) above;

“special direction” means any direction given under article 7;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“vessel” includes 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 used or capable of being used as a means of transportation, storage or access on or under the water; and

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

PART 2

HARBOUR LIMITS

The Harbour Limits

3.—(1) The limits of the harbour within which the Council exercise jurisdiction as a harbour authority and the powers of the Harbour Master may be exercised are—

- (a) The limits of the area within a line drawn from a parish boundary marker at 50° 44' 01" N 01° 16' 52" W (1) by the north side of a public house called “The Folly”, on the eastern bank of the river Medina, from there on a bearing of 272°, to the western bank of that river to a position at 50° 44' 02" N 01° 17' 07" W (2). From that position along the line of the mean high water mark up the western bank of the river Medina to a position at 50° 42' 07" N 01° 17' 32" W (3). At the north end of the weir, then running across the weir and the tributaries of the river Medina called Lukely Brook to a position at 50° 42' 06" N 01° 17' 32" W (4) at the south end of the weir. From that position along the line of the high water mark up the southern bank of the river Medina to 50° 41' 58" N 01° 17' 23"

W (5) at the western end of the weir across the weir and the river Medina, to a position at 50° 41' 58" N 01° 17' 22" W (6) at the eastern end of the weir. From that position along the line of the high water mark up the eastern bank of the river Medina to southern side of Island harbour lock at 50° 43' 30" N 01° 16' 48" W (7) then across the Lock channel to the opposite side at 50° 43' 31" N 01° 16' 47" W (8). From that position along the line of the high water mark up the eastern bank of the river Medina to position at 50° 43' 54" N 01° 16' 37" W (9) on the southern side of the tributary, then across the mouth of the tributary to position at 50° 43' 55" N 01° 16' 37" W (10) on the northern bank. From that position along the line of the high water mark to the start point at the parish boundary marker, on the eastern bank of the river at 50° 44' 01" N 01° 16' 52" W (1) to the north side of a public house called "The Folly",

(b) the extent of those parts of the harbour premises not within that area.

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbour referred to in paragraph (1) and the boundaries shown on the harbour map the description of the boundaries shall prevail over the harbour map.

(3) In this article—

(a) "the harbour map" has the same meaning as that ascribed to the "signed map" in the Order of 1988(a);

(b) "the level of high water" means the level of mean high water spring tides; and

(c) all coordinates are in degrees, minutes and seconds and based on WGS84 datum, where "WGS84" means the World Geodetic System 1984.

(4) The Council must keep, and make available for inspection at its main office and on its website within the period of 30 days beginning with the day on which this Order comes into force, an illustrative plan(b).

(5) The Council must update the illustrative plan to reflect any alterations to the extent of the harbour premises within the period of 30 days beginning with the day on which the alterations are made.

(6) In this article "illustrative plan" means a plan showing, for illustrative purposes only, the harbour limits and harbour premises as described in article 3.

PART 3

HARBOUR REGULATION

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

4.—(1) The Council may, in accordance with the requirements of article 5, give directions for the purpose of promoting or securing conditions conducive to—

(a) the ease, convenience or safety of navigation,

(b) the safety of persons,

(c) the protection of property, or

(d) 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,

(b) to persons designated in the direction,

(a) The signed map to the Order of 1988, as defined in article 2 of that Order, 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.

(b) The illustrative plan is available on www.iow.gov.uk and a hard copy is available for inspection at the Council's main office as above.

- (c) to the whole of the harbour or to a part, or
- (d) at all times or at certain times or at certain states of the tide,

and every direction under this article shall 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 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.

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

Procedure for giving, amending or revoking general directions

5.—(1) Subject to paragraph (7), if the Council proposes to give, amend or revoke a general direction under article 4 (general directions), 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, and
 - (iii) 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 in the harbour and at the Council’s main office on the same date as the notice given in accordance with sub-paragraph (a) and keep those notices on display for a minimum of 6 weeks;
- (c) consult with the designated consultees upon the proposal, including allowing a period of not less than 6 weeks beginning with 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 on the proposal;
- (d) have regard to all representations made during that consultation;
- (e) give notice in writing to the designated consultees, and to those other persons that have provided a consultation response following the 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 the requirements of 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, having made representations against the proposal, have confirmed in writing that they are maintaining an objection to the proposal in accordance with paragraph (1)(f); or
- (c) where a designated consultee has maintained an objection to the proposal in accordance with paragraph (1)(f), the requirements specified in paragraph (3) have been complied with.

(a) The Register of all in force directions 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.

(3) Where a designated consultee has confirmed in writing to the Council that they maintain an objection to the proposal—

- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
 - (i) by agreement between the Council and each of the designated consultees maintaining an objection to the proposal 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 in writing to the parties with findings and reasoned 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 and recommendations, but it is not bound to give effect to the recommendations, and, once it has decided, it must give notice in writing to the designated consultees and to any other person that provided a consultation response of their decision and the reasons for that decision.

(4) 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 parties 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.

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

(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) 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 in the harbour which—
 - (i) is expected to commence within 16 weeks of the Council having been notified of or otherwise becoming aware of the intended activity or operation,
 - (ii) is to last not more than 28 days, and
 - (iii) the Council considers that the giving or amending of a general direction is required, taking into account other activities and 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 from the date of that notice, apply the procedures specified 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) in paragraph (1)(c), for “sub-paragraphs (a) and (b)” substitute “paragraph (8)(a)”, and
 - (iii) 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

6.—(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 once in a newspaper circulating in the area of the harbour and electronically on the Council's website^(a) for the period of 28 days from the date of publication of the notice 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, amendment or revocation of a general direction in any manner which it considers to be appropriate.

Special directions as to use of the harbour, etc.

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

- (a) requiring a person to comply with a requirement made in or under—
 - (i) a general direction;
 - (ii) a provision of the Newport Harbour Provisions 1852 to 2021; or
- (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) regulating the discharge or use of ballast.

(2) The harbour master may give a special direction which applies to—

- (a) a person;
- (b) all vessels;
- (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 special direction which applies to a person within the harbour for the purpose in paragraph (1)(h).

(a) www.iow.gov.uk.

(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—

- (a) natural beauty;
- (b) fauna and flora;
- (c) archaeological or geological or physiographical features; or
- (d) any other natural features.

(5) A special direction may be given in any 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) 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 direction 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 they 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 Council, 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 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

10. The giving of a general direction or a special direction in respect of or applying to a vessel shall not diminish nor 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.

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(a) 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.

(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

(a) 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.

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(a) 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.

(a) 1978 c. 30.

(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)(a) 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”.

(a) 1968 c. 59.

Signed by authority of the Marine Management Organisation

Tom McCormack
Chief Executive Officer

9th February 2021

An authorised employee of the Marine Management Organisation

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of the Isle of Wight Council (“the Council”), modernises and consolidates the statutory harbour powers applying in relation to Newport Harbour and provides for the following matters:

(1) Clarifying the limits of the harbour (article 3) including maps and plans of the harbour limits. The Order defines the limits of Newport Harbour by way of World Geodetic System coordinates (“WGS84”) and includes harbour premises (defined in article 2) but also requires the Council to maintain an illustrative plan showing the harbour limits and harbour premises, which must be updated within 30 days of any changes (article 3) and may be inspected at www.iow.gov.uk and, during working hours, at the principal office of the Council at County Hall, High Street, Newport, Isle of Wight PO30 1UD.

(2) Conferring on the Council and the harbour master (defined in article 2) powers of general and special direction for the regulation and management of the harbour (articles 4 to 10). General directions may be given by the Council 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; or the prevention or amelioration of environmental harm in the harbour (article 4). Special directions may be given by the harbour master for various purposes related to the management of the harbour and the regulation of vessels using the harbour (article 7). A register of all in force general directions may be inspected during working hours at the harbour office of the Council (article 4).

(3) Creating an offence of failing to comply with special or general directions, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 8). A defence of due diligence is available to a person charged under article 8 (article 8(2)).

(4) Conferring on the Council appropriate general powers and functions for the management of the harbour (article 11).

(5) Incorporating provisions from the Harbours, Docks, Piers Clauses Act 1847 (article 12).

(6) Conferring on the Council the power to grant tenancies and to dispose of land forming part of the harbour premises (defined in article 2) and to engage in commercial activities (articles 13 and 14);

(7) Requiring the owner or master of a vessel to provide information relating to a vessel for the purpose of landing charge, where requested by the Council (article 16);

(8) Creating an offence of obstructing officers of the Council without reasonable excuse (article 16).

(9) Providing savings for the Crown (article 17) and Trinity House (article 18).

(10) To facilitate the above, the Order amends the Orders of 1968 and 1988 as set out in article 20.

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

An explanatory memorandum is available alongside the instrument on the UK Legislation website at www.legislation.gov.uk.

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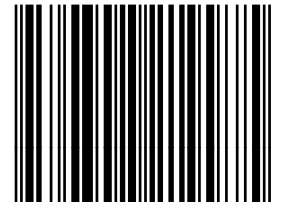
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