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STATUTORY INSTRUMENTS

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**2021 No. 43**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Weymouth Harbour Revision Order 2021**

*Made* - - - - *14th January 2021*  
*Laid before Parliament* *21st January 2021*  
*Coming into force* - - *17th February 2021*

Weymouth and Portland Borough Council applied for a harbour revision order in accordance with section 14(2)(a) of the Harbours Act 1964<sup>(1)</sup> (“the Act”).

On the 1st April 2019 the Bournemouth, Dorset and Poole (Structural Changes) Order 2018<sup>(2)</sup> established a new Council known as Dorset Council, replacing Weymouth and Portland Borough Council in respect of the borough of Weymouth and Portland (and the Council’s from the districts of East Dorset, North Dorset, Purbeck and West Dorset).

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an Order<sup>(3)</sup> under section 42A of the Act<sup>(4)</sup> delegated the functions of the appropriate Minister under section 14<sup>(5)</sup> to the Marine Management Organisation<sup>(6)</sup>.

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) of the Act, makes the following Order.

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(1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 1(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).

(2) S.I. 2018/648.

(3) S.I. 2010/674.

(4) 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).

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

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

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Weymouth Harbour Revision Order 2021 and shall come into force on 17th February 2021.

#### Interpretation

2.—(1) In this Order—

“the Act of 1847” means the Harbour, Docks and Piers Clauses Act 1847(7);

“the Act of 1854” means the Weymouth and Melcombe Regis Markets and Pier Act 1854(8);

“the Act of 1879” means the Weymouth and Melcombe Regis Bridge Act 1879(9);

“the Act of 1887” means the Weymouth and Melcombe Regis Corporation Act 1887(10);

“the Act of 1914” means the Weymouth and Melcombe Regis Corporation Act 1914(11);

“the Order of 1930” means the Weymouth and Melcombe Regis Harbour Order 1930(12);

“the Act of 1964” means the Harbours Act 1964(13);

“the Order of 1988” means the Weymouth and Portland (Pilotage) Harbour Revision Order 1988(14);

“the Order of 1996” means the Weymouth Harbour Revision Order 1996(15);

“aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same;

“the Council” means Dorset Council;

“charges” means the charges, rates, tolls and dues which the Council is for the time being authorised to demand, take and recover in relation to the harbour undertaking;

“commercial refuelling activities” means recharging or emptying (in whole or part) a vessel with fuel in exchange for financial payment or other valuable consideration;

“electronic communications network” has the meanings given by section 32 to the Communications Act 2003(16);

“functions” means the powers and duties at and in connection with the harbour authorised by this Order and the Acts and Orders listed in Schedule 3 (to the extent that those Acts and Orders relate to the harbour);

“general direction” means a direction given under article 21 of this Order;

“the harbour” means the harbour of Weymouth the limits of which include the harbour premises and are defined in article 6 of this Order;

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(7) 1847 c. 27.

(8) 17 Victoria 1 c. xxxv.

(9) 42 & 43 Victoria 1 c. xii.

(10) 50 & 51 Victoria 1 c. cliii.

(11) 4 & 5 Geo. 5 c. clxxiv.

(12) 20 & 21 Geo. 5. c. cxlii Schedule 3.

(13) 1964 c. 40.

(14) S.I. 1988/1707.

(15) S.I. 1996/15.

(16) 2003 c.21. Section 32(1) was amended by S.I. 2011/1210, Schedule 1 paragraph 9(a).

“harbour facilities” means shipping, fisheries, marine, recreational, leisure, tourism and retail facilities (including buildings).

“harbour limits plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed plan referred to in the Weymouth Harbour Revision Order 2021”, one copy of which is deposited at the offices of the Marine Management Organisation (17) and the other at the principal office of the Council(18).

“the harbour master” means any person appointed as such by the Council, and includes the duly authorised 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;

“the harbour premises” means land adjacent to the wet harbour area and 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, buildings and all other works, conveniences, land and premises which at the date of this Order includes the areas shown shaded blue on the harbour premises plan;

“the harbour premises plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed plan referred to in the Weymouth Harbour Revision Order 2021”, one copy of which is deposited at the offices of the Marine Management Organisation and the other at the principal office of the Council;

“harbour revenue” means and includes all moneys receivable by the Council for and in relation to the harbour undertaking other than borrowed moneys and moneys which ought to be carried to capital account;

“the harbour undertaking” means the undertaking carried on by the Council at and in connection with the harbour authorised by this Order and the Acts and Orders listed in Schedule 3 (to the extent that those Acts and Orders relate to the harbour);

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“Inner Harbour North” means that part of the harbour which is described in the Schedule to the Order of 1996 and which, for the purposes of identification only, is shown edged red on the signed plan deposited with that Order;

“jet bike” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) 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) above;

“land” includes land covered by water;

“the level of high water” means the level of mean high-water springs;

“the level of low water” means the level of mean low-water springs;

“master”, in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

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(17) The Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

(18) Dorset Council, County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ.

“operator” has the meaning given by paragraph 2 Schedule 3A to the Communications Act 2003;

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre on water but not a hovercraft or hydrofoil vessel;

“special direction” means a direction given under article 24 of this Order;

“statutory undertaker” means —

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990<sup>(19)</sup>,
- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949<sup>(20)</sup>,
- (c) any operator of an electronic communications network;

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

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans and mobile homes and includes a hovercraft or any other amphibious vehicle;

“vessel” means a ship, boat, houseboat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a jet bike, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

“wet harbour area” means those parts of the area described in article 6(1) of this Order which are covered by water at the level of low water.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) Reference points specified in this Order shall be construed as references to Latitude and Longitude reference points.

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

**3.—**(1) The Act of 1847 (except sections 6 to 26, 28, 31, 42, 48 to 50, 67, 70, 92 and 101), (so far as applicable to the purposes and not inconsistent with the provisions of this Order, the Act of 1854, the Act of 1887 and the Act of 1914 respectively), is hereby incorporated with this Order, the Act of 1854, the Act of 1887 and the Act of 1914 respectively subject to the modifications stated in paragraphs (2) to (4) below.

(2) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission) of the Act of 1847 shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(3) Section 69 (combustible matters on quays, &c., to be removed) of the Act of 1847 shall have effect subject to the modification that for the words from “shall forfeit” 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”.

(4) In construing the provisions of the Act of 1847 as incorporated with this Order, the Act of 1854, the Act of 1887 and the Act of 1914 respectively —

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<sup>(19)</sup> 1990 c. 8.

<sup>(20)</sup> 1949 c. 74: section 1 was amended by the Local Government Act 1972 (c. 70), Schedule 30.

- (a) the expression “the special Act” means this Order, the Act of 1854, the Act of 1887 and the Act of 1914 respectively;
- (b) the expression “the undertakers” means the Council;
- (c) the expression “the harbour, dock, or pier” shall mean the harbour, the breakwaters and includes those docks, piers, berths, quays, landing places and wharves forming part of the harbour premises;
- (d) for the definition of the word “vessel” in section 3 (interpretation) of the Act of 1847 there shall be substituted the definition of that word in article 2(1) of this Order;
- (e) the reference in section 53 (penalty on shipmasters not complying with directions of the harbour master) 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.

## PART 2

### JURISDICTION, HARBOUR LIMITS AND GENERAL FUNCTIONS

#### **Jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 (interpretation) of the Act of 1964, and the powers of the harbour master shall be exercisable within the harbour.

(2) For and incidental to the performance of its functions under this Order, the Council may employ and appoint harbour masters.

(3) The Council shall, within the harbour, be a local lighthouse authority within the meaning of sections 193 (general and local lighthouse authorities) and 201 (powers of harbour authorities) of the Merchant Shipping Act 1995(21).

#### **General functions**

5.—(1) The Council may, subject to the provisions of this Order, take all such steps from time to time as it considers necessary or desirable for the maintenance, operation, management and improvement of the harbour and the harbour facilities afforded therein or in connection therewith, 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 paragraph (1) the Council 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, harbour facilities, works and equipment in the harbour (including those executed or placed pursuant to sub-paragraph (i) above); and

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(21) 1995 c.21.

- (c) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.
- (3) The Council shall, from time to time, formulate, publish<sup>(22)</sup> and review a business plan (“Harbour Business Plan”) in relation to its maintenance, conservation, operation, management and improvement of the harbour undertaking, which it shall have regard to when performing its functions.
- (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.
- (5) This article is without prejudice to the powers of the Council under or by virtue of any other enactment.

### Harbour Limits

- 6.—(1) The limits of the harbour within which the Council shall exercise jurisdiction as a harbour authority and the powers of the harbour master may be exercised shall comprise—
- (a) the area below the level of high water included within a line drawn from a point on the shoreline at Nothe Fort (position 50° 36.42’N, 02° 26.6’W) in a 090.0 degrees (true) direction to the north-east corner of the dockyard port of Portland (position 50° 36.42’N, 02° 23.88’W) and thence in a 343.5 degrees (true) direction for 1.675 nautical miles to the shoreline (position 50° 38.01’N, 02° 24.60’W); and then following the level of high water around the coast of Weymouth Bay and up the River Wey as far as Westham Embankment (position 50° 36.71’N, 02° 27.39’W) (beneath Westham Bridge) (but not including Westham Bridge) and then in a straight line across Westham Embankment to the opposite bank of the River Wey (position 50° 36.71’N, 02° 27.49’W) and then following the level of high water down the River Wey and around the coast to a point on the shoreline at Nothe Fort (position 50° 36.42’N, 02° 26.6’W); such area shown shaded blue on the harbour limits plan; and
  - (b) the extent of those parts of the harbour premises not within sub-paragraph (a).
- (2) In the event of any discrepancy between the descriptions of the boundaries of the harbour referred to in this article and the boundaries shown on the harbour limits plan or the harbour premises plan the descriptions in question shall prevail over said plans.
- (3) In the event of the harbour premises being amended from those set out on the harbour premises plan annexed to this order, the Council shall prepare an updated plan for illustrative purposes only, to be made available at the harbour office of the Council<sup>(23)</sup> and on the harbour website<sup>(24)</sup> within the period of 30 days beginning with the day on which the changes are made.

## PART 3

### FINANCES

#### Application of finances

7. The Council shall apply the harbour revenue in the manner following and not otherwise—

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<sup>(22)</sup> Available online at <https://www.weymouth-harbour.co.uk/> or for inspection at Weymouth Harbour Office, 13 Custom Quay House, Weymouth, Dorset, DT4 8BG.

<sup>(23)</sup> Weymouth Harbour Office, 13 Custom Quay House, Weymouth, Dorset, DT4 8BG.

<sup>(24)</sup> <https://www.weymouth-harbour.co.uk/>.

- (a) first in payment of the working and establishment expenses and cost of maintenance of the harbour;
- (b) secondly in payment of the interest on any moneys borrowed by the Council for the harbour under any statutory borrowing power;
- (c) thirdly in payment of all other expenses properly chargeable to harbour revenue; and
- (d) fourthly to an account established as a reserve fund for the harbour.

### **Reserve fund**

8.—(1) The Council shall establish and maintain a reserve fund.

(2) The Council shall carry to a reserve fund such part of the harbour revenue as shall be available for the purpose in accordance with article 7(d).

(3) Any reserve fund established or maintained under this article shall from time to time be applied by the Council in its discretion—

- (a) in or towards meeting any deficiency on the harbour revenue account in any year; or
- (b) to meet any extraordinary claim or demand in respect of the harbour undertaking; or
- (c) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the harbour undertaking or any vessels, plant or equipment of the Council connected to the harbour undertaking; or
- (d) for improving the operational area and the navigation of the harbour and the approaches to the harbour; or
- (e) for any other lawful purpose sanctioned by the Council and connected with the harbour undertaking.

### **Borrowing powers**

9.—(1) Notwithstanding anything contained in any enactment, the Council may from time to time, for the general purposes of the harbour undertaking, borrow upon the security of all or any of the harbour revenue 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) Without prejudice to 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 harbour 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 Council 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 Council whose employment related to the harbour undertaking or to the family or dependants of such persons.

## PART 4

### CHARGES

#### **Charges other than ship, passenger and goods dues**

**10.** The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig, or floating platform or any other vessel not being a ship as defined in section 57(1) of the Act of 1964 entering, using or leaving the harbour such reasonable charges as it may determine and sections 30 (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges) and 31 (right of objection to ship, passenger and goods dues) of the Act of 1964 shall with all necessary modification apply to the charges authorised by this article as they may apply to ship, passenger and goods dues demanded under section 26 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them) of the Act of 1964.

#### **Charges for services or facilities**

**11.** In addition to article 10 of this Order and its power to demand ship, passenger and goods dues under section 26 of the Act of 1964, the Council may demand, take and recover such reasonable charges for services and facilities (including pontoons) provided by the Council at the harbour as it may from time to time determine.

#### **Payment of charges**

**12.—(1)** The charges which the Council is for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment shall be payable before the removal from the harbour or the harbour premises of any vessel or goods in respect of which they are payable, and may be demanded, taken and recovered by such persons, at such places, at such times and under such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner or master of the vessel;

(b) goods, shall be payable by the owner, consignee or shipper of the goods.

(3) Where paragraph (2) provides that charges are payable by more than one person, those persons shall be jointly and severally liable.

(4) Without prejudice to paragraph (1) above, the terms and conditions as to the payment of charges which the Council may from time to time specify may include the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### **Compounding arrangements and rebates**

**13.—(1)** The Council may confer total or partial exemptions from, or allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption, rebate or composition.

(2) Nothing in section 30 of the Act of 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a total or partial exemption, a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.



### **Deposit for charges**

14.—(1) The Council may, if it thinks fit, require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge.

(2) Where such a person fails to deposit or guarantee the sum of money required the Council may detain in the harbour the vessel or goods in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

### **Liens for charges**

15.—(1) A person who by agreement with the Council collects charges on their behalf and who pays or gives security for the payment of charges on goods in their possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not personally liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in their custody, and in that event they shall have a like lien on the goods for the amount of those charges as they would have in respect of their charges for safe custody or carriage of the goods, as the case may be.

### **Refusal to pay charges for a landing place**

16. The harbour master may prevent a vessel from using a landing place provided by the Council, if the master of the vessel refuses to pay the charges for such use.

### **Exemptions from harbour dues**

17.—(1) Except insofar as may be agreed between the Council and the government department or person concerned the Council shall not be entitled to demand harbour dues from, or in respect of—

- (a) a vessel—
  - (i) in the service of HM Revenue and Customs in the execution of their core duties and not carrying persons or goods for reward;
  - (ii) belonging to or used by a lifeboat service whilst employed in or in connection with the core functions of that service;
  - (iii) in the service of a police force or other emergency service in the execution of their core duties and not carrying persons or goods for reward;
- (b) HM Revenue and Customs or any officer or other person employed in their service in execution of their core duties in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, HM Revenue and Customs;
- (c) an officer of HM Revenue and Customs or any other person employed in their service while in the execution of their core duties;
- (d) a person employed by the Secretary of State for Defence while in the execution of core duties;
- (e) Officers of the Department for Transport in the execution of their core duties shall at all times be exempt from dues.

(2) In this article “dues” means ship, passenger and goods dues which the Council may demand under section 26 of the Act of 1964.

### **Recovery of charges**

18. In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with this Order, (and, in a case where the master of a vessel in respect of which a charge is payable to the Council refuses or neglects to pay the same or any part thereof, whether or not the Council's collector has gone on board the vessel and demanded the charge pursuant to section 44 of that Act), the Council may recover any charges payable to it as a debt in any court of competent jurisdiction.

### **Harbour master may prevent sailing of vessels**

19. The harbour master may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to the harbour master of the payment of any charges payable in respect of—

- (a) the vessel;
- (b) passengers on the vessel; or
- (c) goods imported or exported on the vessel.

## **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(25) (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.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Advisory bodies**

**28.**—(1) The Council must establish one or more advisory body or bodies which the Council must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and its navigation.

(2) The Council must make arrangements for every such advisory body to meet not less than twice a year.

(3) The Council must take into consideration within a reasonable time period any matter, recommendation or representation which may from time to time be referred or made to it by such an advisory body whether or not that advisory body has been consulted by the Council on the matter, recommendation or representation so referred or made.

(4) The advisory body or bodies established pursuant to this article must consist of such number or numbers of persons appointed by the Council as the Council from time to time considers appropriate.

(5) Appointments to any such advisory body must be made by the Council in accordance with a scheme prepared by it for that purpose and the scheme must provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in the functioning of the harbour.

(6) Any such advisory body may determine its own quorum and procedure and must appoint a chairperson.

(7) An individual member of any such advisory body may, on giving notice in writing to the chairperson of that body, send a substitute person to any meeting of the body.

(8) A member of such an advisory body may hold office for the period of three years from the date of this appointment and at the end of that period will be eligible for reappointment.

(9) A member of such an advisory body may resign their office at any time by notice in writing given to the Council.

#### **Development of land etc.**

**29.**—(1) The Council may, subject to obtaining the necessary rights in or over land—

- (a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbour; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbour,

provided that it is conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the Council referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

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

**30.**—(1) The Council may, for the purposes of or in connection with the carrying on of the harbour undertaking, lease or grant the use or occupation of, or any right or interest in or over, any

lands, works, buildings, machinery, equipment or other property forming part of the harbour for such period, at such rents and other considerations and on such terms and conditions as it thinks fit.

(2) The Council may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery, equipment or other property vested in it if it considers that—

- (a) the property is surplus to that which is required for the purpose of the harbour; or
- (b) it would conduce to the improvement, maintenance or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council, for such consideration and on such terms and conditions as it thinks fit.

(3) The powers conferred in this article in relation to the Inner Harbour North may be exercised by the Council in respect of the Inner Harbour North, in addition to and not subject to the restrictions contained in the Order of 1996.

### **Power to appropriate lands and works for particular uses, etc.**

**31.**—(1) Notwithstanding anything in any statutory provision of local application the Council may from time to time for the purpose of or in connection with the management of the harbour set apart and appropriate any part of the harbour for the time being vested in, or occupied or administered by the Council as part of the harbour undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall make any use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council and—

- (a) the harbour master, or as the case may be, such officer, may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 (Powers of harbour master as to mooring of vessels in harbour) of the Act of 1847 shall extend and apply with the necessary modifications to and in relation to such vessels.

### **Other commercial activities**

**32.**—(1) The Council may, in addition to any other powers conferred on the Council—

- (a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a Company, for carrying on any part of the harbour undertaking or carrying on at any place a trade or business of any kind,

provided that it is conducive to the improvement maintenance or management of the harbour in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a Council referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

(3) The powers of the Council under this article are additional to the powers of the Council under section 37 (Powers of harbour authorities to acquire a harbour business or shares in a harbour business) of the Docks and Harbours Act 1966(26).

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(26) 1966 c.28; section 37(3) was repealed by the Transport and Works Act 1992 (c.42), Schedule 4 (Part II).



### **Power to delegate functions**

**33.** Subject to paragraph 9B of Schedule 2 to the Act of 1964(27) (functions which cannot be delegated under a power conferred by a harbour revision order), the Council may delegate the performance of any of its functions to be carried out by any such Company as is referred to in article 32(1)(b).

### **Moorings**

**34.—**(1) The Council may provide, place, lay down, maintain, renew, use, have and remove such moorings within the harbour—

- (a) on land owned or leased by it or in which it holds an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour, as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided under this article or moored to land owned or leased by the Council such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2) above.

(4) Subject to paragraph (5), the Council may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring them within 28 days to remove the mooring so as to enable the Council to provide moorings in accordance with paragraph (1) above.

(5) The Council shall offer to make available to the person having the control of the vessel referred to in the notice a mooring provided by it under paragraph (1) above as soon as such mooring has been laid down.

(6) If any person fails to comply with a notice given by the Council under paragraph (4), the Council may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

(7) Subject to paragraphs (8) and (9) the Council may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, renew, use and have existing and future moorings, for vessels in the harbour.

(8) Nothing in any licence granted under paragraph (7) shall entitle a person to place, lay down, maintain, renew or use and have any mooring on land not owned or leased by them or by the Council or in which they have no appropriate interest.

(9) A licence granted under paragraph (7) shall be valid only for a period of a maximum of one year commencing with the date on which it is granted.

(10) The Council may charge for a licence granted under paragraph (7) such reasonable fee as the Council may from time to time prescribe.

(11) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any mooring in the harbour or any part thereof;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Council under this article; or

- (d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Council under this article;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) If any person commits an offence under paragraph (11)(d) above, the Council may remove the mooring in question and recover from that person the expenses incurred in doing so.

(13) In this article “mooring” includes any buoy, pile, post, chain, pillar or like apparatus or convenience used for the mooring of vessels.

### **Bunkering**

**35.**—(1) The Council may from time to time grant to a person with or without conditions a licence to carry out commercial refuelling activities related to vessels in the harbour.

(2) Nothing in any licence granted under paragraph (1) shall entitle a person to carry out commercial refuelling activities from on land not owned or leased by them or by the Council or in which they have no appropriate interest.

(3) Any licence granted under paragraph (1) shall be valid only for a period of one year commencing with the date on which it is granted.

(4) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(5) Any person who without reasonable excuse carries out or permits a commercial refuelling activity related to a vessel in the harbour except in accordance with a licence issued by the Council under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Aids to navigation**

**36.**—(1) In addition to its powers under section 201 of the Merchant Shipping Act 1995 (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the Council may erect or place, alter, discontinue or remove aids to navigation in any place adjacent to the harbour.

(2) The Council shall not exercise the powers of paragraph (1) above without the approval of the Trinity House.

### **Power to dredge**

**37.** The Council, as may appear to it to be necessary or desirable for the purposes of the harbour undertaking, may deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of the harbour and the approaches thereto, and it may use, appropriate or dispose of the materials (other than “wreck” within the meaning of Part IX of the Merchant Shipping Act 1995) from time to time dredged by it.

### **Repair of landing places, etc.**

**38.**—(1) In this article, “relevant feature” means any landing place, jetty, wall, embankment, bridge, structure or other work in the harbour or on land immediately adjoining the waters of the harbour other than a relevant feature under the control or management of the Council.

(2) The Council may by notice require the owner or occupier of a relevant feature which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbour; or
  - (b) a hindrance to the navigation of the harbour, to remedy its condition to the Council's reasonable satisfaction within a reasonable time (not being less than 21 days) specified in the notice.
- (3) If a person to whom notice is given under this article fails without reasonable excuse to comply with the notice within the time stated in the notice or such other time as the Secretary of State on an appeal may substitute therefor—
- (a) that person shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
  - (b) the Council may carry out the work required by the notice and may recover the expenses of so doing from the person on whom the notice was served.
- (4) A notice under this article shall have annexed to it a copy of this article.
- (5) A person aggrieved by a notice served by the Council under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal to the Secretary of State against the notice.
- (6) An appeal under paragraph (5) above shall be made by notice in writing stating the grounds of the appeal.
- (7) A person who appeals under paragraph (5) above shall give to the Council notice of the appeal accompanied by a copy of the statement of appeal; and the Council shall, within 21 days of receipt of the notice, be entitled to furnish to the Secretary of State its observations on the appeal.
- (8) On an appeal under paragraph (5) above, the Secretary of State shall either quash the notice, modify its requirements or dismiss the appeal.

### **Power with respect to disposal of wrecks**

**39.**—(1) In its application to the Council, section 252 of the Merchant Shipping Act 1995 (powers of harbour and conservancy authorities in relation to wrecks) has effect in relation to the harbour and its approaches in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3) below, and to any enactment for the time being in force limiting a person's liability, the Council may recover from the owner of any vessel sunk, stranded or abandoned on or after the date of coming into force of this Order in relation to which it has exercised its powers under section 252 any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Council an emergency, paragraph (2) above shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on it by section 252, other than the power of lighting and buoys, the Council has given to the owner of the vessel not less than 48 hours' notice of its intention to do so.

(4) If before the notice expires the Council receive from the owner counter-notice in writing that the owner desires to dispose of the vessel themselves, the owner shall be at liberty to do so; and the Council shall not exercise the powers in section 252 in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to the owner by the Council.

(5) Notice under paragraph (3) above to the owner of any vessel may be served by the Council either by delivering it to the owner or by sending it to the owner by registered post or the recorded delivery service addressed to the owner at their last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Council, or

is not in the United Kingdom, by displaying the notice at the harbour office of the Council and electronically on the harbour website for the period of its duration.

(6) In this article “owner”, in relation to any vessel, means the person who was the owner of the vessel at the time of the sinking, stranding or abandonment.

(7) The powers conferred on the Council by this article shall be in addition to and not in derogation of any other powers exercisable by it for or with respect to the removal of wrecks within the harbour and its approaches.

### **Powers to deal with unseaworthy vessels**

**40.**—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 (unseaworthy vessels to be altogether removed from the harbour) and on the Council by section 252 of the Merchant Shipping Act 1995 (Powers of harbour and conservancy authorities in relation to wrecks) the Council may sell, break up or otherwise dispose of any vessel which is unseaworthy and has been laid by or neglected in the harbour or on land immediately adjoining the harbour.

(2) The Council may retain out of the proceeds of sale of such vessel, or any part of such proceeds, any expenses incurred by it in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and any expenses incurred by the harbour master under section 57 on the Act of 1847 and shall pay the surplus, if any, to the person or body entitled to that surplus.

(3) If the proceeds of the sale are insufficient to reimburse the Council for the said expenses, or there is no sale, the Council may recover the deficiency, or where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(4) Except in the case of emergency, the Council shall, before exercising its powers under this article, give 14 days’ notice in writing of its intention to do so to the registered owner of the vessel and by advertisement in each of two successive weeks in a local newspaper circulating in the area of the harbour, provided that, if the registered owner or their place of business or address is not known to the Council or is outside of the United Kingdom, the notice may be given by displaying it at the principal office of the Council and electronically on the Council’s website for two successive weeks.

### **Removal of obstructions other than vessels**

**41.**—(1) The Council may remove anything, other than a vessel, causing or likely to become an obstruction to, or cause interference with, navigation in any part of the harbour or any approach to the harbour.

(2) The Council may take such steps as appear to it to be appropriate to prevent or minimise such obstruction or interference for the purposes of paragraph (1).

(3) If anything removed by the Council under paragraph (1) above is so marked as to be readily identifiable as the property of any person, the Council shall, within 28 days of its coming into the Council’s custody, give written notice to that person stating that—

- (a) upon proof of ownership to the reasonable satisfaction of the Council, and
- (b) upon payment of any reasonable expenses incurred by the Council under this article,
- (c) possession may be retaken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served).

(4) If for the purposes of this article possession of anything removed is not so retaken it shall at the end of that period vest in the Council.

(5) Notwithstanding the provisions of paragraph (3) above the Council may, at such time and in such manner as it thinks fit, dispose of anything removed under paragraph (1) above—

- (a) which is not so marked as to be readily identifiable as the property of any person; or
- (b) which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(6) If anything disposed of by the Council under this paragraph is sold, the Council shall place a notice at the harbour office and on the harbour website for a period of 28 days giving details of the property sold and may retain out of the proceeds of sale any expenses incurred by it under this article, and any surplus from the proceeds—

- (a) shall be paid to any person who within 24 months from the time when the property came into the custody of the Council proves to the reasonable satisfaction of the Council that they were the owner at that time; or
- (b) if within the said period no person proves their ownership at the said time, shall vest in the Council.

(7) If the proceeds of sale of anything removed under this article are insufficient to reimburse the Council for the expenses set out in paragraph (6), or there is no sale because the property is unsaleable, the Council may—

- (a) recover the deficiency, or
- (b) where there is no sale, recover the whole of the expenses, from the person who was the owner at the time when the property removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

### **Saving for Trinity House**

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

### **Notices**

**43.—**(1) Except where this Order expressly provides otherwise, a notice or other document required or authorised to be given for the purposes of this Order, or any direction given under this Order, must be in writing and be sent by first class post.

(2) Where the person on whom a notice or other document to be sent for the purposes of this Order is a body corporate, the notice or document is duly given if it is given to the secretary or clerk of that body.

(3) Where a person on whom a notice or other document is to be given has agreed in writing that notices may be given by email, or other electronic means, the Council may provide notices by that means 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(**28**) as it applies for the purposes of this article, the proper address of a person in relation to the giving 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 given 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 given 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 given 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 given pursuant to sub-paragraph (b) it may be given by displaying it at the office of the harbour master for the period of its duration.

### **Crown Rights**

**44.**—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown,
- (b) authorise the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or 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 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 existing Byelaws etc.**

**45.** Any byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Council in relation to the harbour undertaking and in force immediately on or before the date on which this Order comes into force, shall, notwithstanding the repeals and amendments set out in articles 46, 47 and Schedule 2 of this Order, continue to have effect.

### **Amendment of the Acts of 1854, 1879, 1887, 1914 and Orders of 1930 and 1988**

**46.**—(1) the Act of 1854 is amended as follows—

- (a) in Section XLIII omit “and Pier”,
- (b) in Section LII omit “Pier and” in the fourth line and “Pier Rates and” starting in the fifth line,
- (c) in Section LVIII omit “and Pier respectively”,
- (d) in Section LX omit “or Pier”, and
- (e) in Section LXI omit “and Pier” and “from each other and” in the fourth line.

(2) the Act of 1879 is amended as follows—

- (a) in Section 2 omit “the clauses of the Harbour, Docks and Piers Clauses Act 1847, with respect to the construction of the harbour, dock, or pier.”,
  - (b) in Section 3 omit “The expression “the harbour, dock or pier” in the Harbours, Docks, and Piers Clauses Act, 1847, means the bridge and the works by this Act authorised;”, and
  - (c) in Section 26 omit “Board of Trade” and substitute “Department for Transport”.
- (3) the Act of 1887 is amended as follows—
- (a) in Section 4 omit “The Harbours Docks and Piers Clauses Act 1847 (except sections 16,17,18 and 19 unless the Board of Trade otherwise require)”,
  - (b) in Section 20 omit “not exceeding twenty-one years” and the words “and a lessee shall have and may exercise all the same powers of making levying and recovering the said charges as the Corporation have or might exercise under this Act and shall be subject to the same provisions as to accounts and otherwise as the Corporation are subject under the provisions of this part of this Act”,
  - (c) in Section 22—
    - (i) insert “reasonable” before “rates” in the second line,
    - (ii) omit “not exceeding those set forth in Schedule E and Schedule F respectively to the Act of 1854”,
    - (iii) in subsection 1 insert “reasonable” before “rate”,
    - (iv) in subsection 1 omit “of not exceeding twopence”,
    - (v) in subsection 2 insert “reasonable” after “such” in the fourth line,
    - (vi) in subsection 2 omit “not exceeding sixpence” starting in the fourth line,
    - (vii) in subsection 2 omit “sixpence” and substitute “the reasonable special rates” in the penultimate line.
  - (d) For Section 23 substitute “Subject to the provisions of this Act sections XXXI and XXXII of the Act of 1854 shall extend and apply to the piers”,
  - (e) in Section 33 omit “five pounds” and substitute “level 3 on the standard scale”,
  - (f) in Section 41 omit “Board of Trade” and substitute “Department for Transport”,
  - (g) in Section 92 omit “Provided that if there be any surplus on the pier revenue after payment of all expenses and outgoings and the said ten per centum on the moneys from time to time expended by the Corporation for or in relation to the piers such surplus shall be expended in reducing the rates as herein-before by this Act provided and for no other purpose”,
  - (h) in Section 93 omit—
    - (i) “On the security of the harbour revenue and borough fund and borough rate— For the purposes of the harbour forty thousand pounds;”
    - (ii) “On the security of the pier revenue and borough fund and borough rate— For the purposes of the new pier thirty thousand pounds;” and
    - (iii) “For the purposes of the Pile Pier forty-one thousand three hundred pounds.”
- (4) the Act of 1914 is amended as follows—
- (a) in Section 3 omit “The Harbours Docks and Piers Clauses Act 1847” to the end of the section, and
  - (b) in Section 114 omit “Board of Trade” and substitute “Department for Transport”.
- (5) the Order of 1930 is amended as follows—

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For Article 11 substitute “Section 7 of the Act of 1914 and Articles 6 to 10 (inclusive) of the Order of 1925 shall with any necessary modifications extend and apply to the exercise of the powers of this Order as if the same were re-enacted in this Order.”

- (6) the Order of 1988 is amended as follows—
- (a) in Article 2 for the definition of “the Harbour” substitute “the Harbour” means the area described in article 6(1) of the Weymouth Harbour Revision Order 2021, and
  - (b) The plan deposited in connection with the Order of 1988 (therein called the “signed plan”) shall be treated as being amended accordingly.

### **Revocation and Repeal**

**47.** On the date of this Order the enactments mentioned in the first and second columns of the Schedule 2 to this Order shall be revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

*Tom McCormack*  
Chief Executive Officer  
An employee of the Marine Management  
Organisation

14th January 2021



## SCHEDULES

### SCHEDULE 1

Article 20

#### PURPOSES FOR WHICH BYELAWS MAY BE MADE

1. regulating the use of any works and facilities provided by the Council;
2. 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;
3. regulating the conduct of all persons within the harbour, not being—
  - (a) members of a police force;
  - (b) officers or servants of the Crown; or
  - (c) members of a fire brigade, whilst in the exercise of their duties as such;
4. regulating the placing, maintenance and use of moorings within the harbour;
5. preventing and removing obstructions or impediments within the harbour or the harbour premises;
6. regulating the launching of vessels into the harbour and /or from the harbour premises;
7. regulating or prohibiting the use in the harbour or on board any vessel therein of fires, lights, tobacco or any other substance, equipment, tools or appliances which the Council considers involves a risk of fire, explosion or chemical reaction;
8. prohibiting the use of or regulating the use, movement, speed, placing, loading, unloading, driving and parking of vehicles within the harbour premises;
9. requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels in the harbour;
10. regulating the navigation of vessels in the harbour and their entry into and departure therefrom and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
11. regulating the embarkation of persons on, or their disembarkation from, vessels within the harbour;
12. prescribing the lights and signals to be exhibited or made—
  - (a) by vessels aground within the harbour;
  - (b) by vessels or other devices used for marking obstructions within the harbour; and
  - (c) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the harbour;
13. prohibiting or regulating the discharge into the harbour of any material or substance;
14. 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,

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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;

15. regulating or prohibiting bathing within the harbour;
16. regulating or prohibiting the use by vehicles of the foreshore within the harbour premises;
17. 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;
18. regulating the use within the harbour of yachts, sailing boats, rowing boats, pleasure craft, windsurfers, kitesurfers, jet bikes, jet kayaks, flyboards, other personal watercraft and other small craft;
19. regulating or prohibiting the activities within the harbour of divers, surfers, underwater swimmers, water-skiers and other persons engaged in similar recreational pursuits (including those engaged on a commercial basis);
20. regulating the conveyance to and the laying down at or on the harbour premises of all goods intended for shipment;
21. regulating the control of animals within the harbour;
22. preventing the disposal of any waste matter except at places or in a manner prescribed by the Council;
23. 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 or the harbour premises;
24. regulating the exercise of the powers vested in the harbour master; and
25. for the purposes specified in section 83 of the Act of 1847 (Byelaws may be made for all or any of the purposes herein named).

## SCHEDULE 2

Article 47

### REVOCATION/REPEAL

#### Table

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
1 Geo IV, c. xl	An Act for repairing, or taking down and rebuilding the Bridge with the Borough and Town of Weymouth and Melcombe Regis, in the County of Dorset.	Whole Act
6 Geo IV, c. cxvi	An Act to amend and enlarge the Powers and Provisions of several Acts relating to the Harbour and Bridge of the Borough and Town of Weymouth and Melcombe Regis, in the County of Dorset.	Whole Act

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
17 Victoria I c. xxxv	The Weymouth and Melcombe Regis Markets and Pier Act 1854	Sections XXVI to XXVIII (inclusive), XXX, XXXIII to XLII (inclusive), XLVIII, LI, LVI, LVII, LXIV, Schedule E
22 & 23 Victoria I c. v	Weymouth and Melcombe Regis Markets and Pier Amendment Act 1859	Sections XIII, XVI
42 & 43 Victoria I c. xii	Weymouth and Melcombe Regis Bridge Act 1879	Sections 14, 16 to 25 (inclusive)
50 & 51 Victoria I c. cliii.	Weymouth and Melcombe Regis Corporation Act 1887	Sections 8 to 11 (inclusive), 13, 14, 21, 24, 25, 27 to 32 (inclusive), 40 and the Second Schedule
56 & 57 Victoria I c. ciii.	Pier and Harbour Orders Confirmation (No.1) Act 1893	Whole of The Weymouth Harbour Order 1893
61 & 62 Victoria I c. xcvi.	Pier and Harbour Orders Confirmation (No.1) Act 1898	Whole of the Weymouth Harbour Order 1898
4 & 5 Geo. 5 c. clxxiv	The Weymouth and Melcombe Regis Corporation Act 1914	Sections 111, 112 and 113
15 & 16 Geo. 5. c. lxxiv.	Pier and Harbour Orders Confirmation (No.2) Act 1925	The whole of the Weymouth and Melcombe Regis Harbour Order 1925 apart from articles 6 to 10 (inclusive).
20 & 21 Geo. 5. c. cxlii.	Pier and Harbour Orders Confirmation (No. 2) Act 1930	Articles 9, 10, 12 and 16 of the Weymouth and Melcombe Regis Harbour Order 1930
<a href="#">S.I. 1993/1027</a>	The Weymouth and Portland Harbour Revision Order 1993	Whole Order

## SCHEDULE 3

Article 2

## ACTS AND ORDERS

The Weymouth Harbour and Melcombe Regis Markets and Piers Act 1854

The Weymouth and Melcombe Regis Markets and Pier (Amendment) Act 1859

Weymouth and Melcombe Regis Bridge Act 1879

Weymouth and Melcombe Regis Corporation Act 1887

Weymouth and Melcombe Regis Corporation Act 1914

Weymouth and Melcombe Regis Harbour Order 1925

Weymouth and Melcombe Regis Harbour Order 1930

Weymouth and Portland Harbour Revision Order 1996

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## EXPLANATORY NOTE

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

This Order, made on the application of Weymouth and Portland Borough Council (now Dorset Council) modernises and consolidates the statutory harbour powers applying in relation to Weymouth Harbour and provides for:

(1) The Jurisdiction (article 4) and General functions (article 5) of the Council as the statutory harbour authority for Weymouth Harbour and clarity on the limits of the harbour (article 6) including plans of the harbour limits and the harbour premises which can be inspected during working hours at the office of the Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH and the principal office of the Dorset Council County Hall, Colliton Park, Dorchester, Dorset, DT1 1XJ.

(2) Powers to vest in the Council relating to finances including application (article 7), reserve fund (article 8) and borrowing powers (article 9).

(3) A modern suite of charging powers (article 10 – 19) including exemptions from harbour dues (article 17) and prevention of sailing of vessels (article 19).

(4) Powers of general and special direction on the Council and the harbour master (defined in article 2) for the regulation and management of the harbour (articles 20 to 27). A register of all in force general directions which may be inspected during working hours at the harbour office of the Council (article 23). This Order creates 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 25). A defence of due diligence is available to a person charged under article 25 (article 25(2)).

(5) The establishment of an advisory body consisting of harbour stakeholders with which the Council are required to consult on material matters (article 28).

(6) Powers relating to development of land (article 29), power to grant tenancies and dispose of land (article 30), power to appropriate lands and works for particular uses, etc. (article 31), other commercial activities (article 32), power to delegate functions (article 33).

(7) Powers relating to moorings (article 34), bunkering (article 35), aids to navigation (article 36), power to dredge (article 37), repairing of landing places (article 38).

(8) Powers relating to disposal of wrecks (article 39), unseaworthy vessels (article 40), removal of obstructions other than vessels (article 41) and notices (article 43).

(9) Savings for Trinity House (article 42), the Crown (article 44) and existing byelaws etc. (article 45).

(10) To facilitate that above, the Order repeals and revokes the Acts and Orders set out in Schedule 2 to the Order and amends the Acts of 1854, 1879, 1887, 1914 and Orders of 1930 and 1988 as set out in article 46.

An impact assessment has not been prepared for this Order as there is no, or no significant, impact predicted on businesses, charities, voluntary bodies or the public sector.

An Explanatory Memorandum is available alongside the instrument on the UK legislation website at [www.legislation.gov.uk](http://www.legislation.gov.uk).