

Annex C-2: Application of Cattewater Harbour Commissioners

PORT OF PLYMOUTH

CATTEWATER HARBOUR COMMISSIONERS

2 The Barbican, Plymouth, PL1 2LR

e-mail: info@plymouthport.org.uk



PLYMOUTH PILOTAGE SERVICE

2 The Barbican, Plymouth, PL1 2LR

e-mail: pilot@plymouthport.org.uk

www.plymouthport.org.uk

Your Ref. MARI 016/003/0009

8th May 2014

Miss Caroline Wall
Ports Governance Branch - Maritime Commercial and Infrastructure
Department for Transport
Zone 1/22
Great Minster House
LONDON
SW1P 4DR

Dear Miss Wall

Application - Harbour Directions : Cattewater Harbour Commissioners

Further to your letter of 10th February 2014 acknowledging our interest in being designated with the power to make Harbour Directions under sections 40A-40D of the Harbours Act 1964 as amended by the Marine Navigation Act 2013.

2.5 The rationale behind why the power to make harbour directions is needed is

a) The Harbour Commissioners were constituted in 1874 to build a breakwater (pier) to protect the harbour. Byelaws (attached) were granted in 1915 which reflected on the ports activity profile at that time.

Since then the port has developed into a thriving commercial operation with 3 privately owned terminals handling our 2 million tonnes of cargo p.a. Vessels of relatively deep draught and up to 150m l.o.a..access the terminals via dredged channels. Leisure craft use several marinas, launch from public slipways and take part in organised events. National and International sailing and powerboat events take place in the wider port and impact on the Cattewater. Commercial fishing vessels up to 40 metres pass through the Cattewater to access Sutton harbour via a tidal lock.

The Byelaws dated 1915, amended 1935, bear little relevance to the current operations and Harbour Directions will assist in managing the ports current activities in line with the Port Marine Safety Code.

The bye-laws are simple in nature, & refer to the port as it was. The fixed penalties are now trivial and should be amended with penalties relevant to the standard scale. Your guidance on how this can be achieved will be gratefully received. (Byelaws reproduced below)

2.10 Stakeholders have been consulted on the suitability of the Harbour Commissioners to be designated with these powers. There were two responses, reproduced below. Neither are obstacles to the progression of this matter.

I anticipate Harbour Directions will be used to manage the safe passage and mooring of ships using the Cattewater. It is a matter of regret that the definition of a ship currently fetters our ability to manage vessels which lie outside the definition of a ship but we are where we are.

I trust this is all in order and sufficient for the application to progress.

Yours sincerely



Capt. Tim Charlesworth F.N.I.
Chief Executive & Harbour Master
Cattewater Harbour Commissioners

Encs.

Copy of Consultation Notice inserted in local Newspaper.

Local Authority Notices

Cattewater Harbour Commissioners

CONSULTATION

Cattewater Harbour
Commissioners seek views
on the taking up of powers
of Harbour Directions, see
[www.plymouthport.org.
uk](http://www.plymouthport.org.uk) or contact the Harbour
Office on 01752 665934.

The following 2 page Consultation was promulgated to all stakeholders and published on our website www.plymouthport.org.uk

Two responses follow - one from RYA and the other Plym Yacht Club.

Consultation

Cattewater Harbour Commissioners, as a Statutory Harbour Authority, wish to modernise by seeking to be designated with powers of Harbour Direction. Current (1917) byelaws, whilst relevant, are inadequate for the traffic using the port. They can be viewed on our website. www.plymouthport.org.uk

Harbour Directions

What are they?

The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called “designated harbour authorities”.

What are they used for?

Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:

- a. to regulate the use of any main navigation channel or fairway;
- b. to prescribe where and how vessels are to moor and move within the harbour;
- c. to ensure ships above a certain size have working radios to allow communication between harbour master and ship;
- d. to specify requirements for no deficiency in machinery; and,
- e. to ensure sufficient people with relevant experience crew specific types of ship.

Who will they apply to?

Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

The grant of powers depends on the Commissioners giving assurance that they will maintain

- a) a Port User Group and to apply a dispute resolution procedure such as is set out in the code of contact when required; and,
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The Port of Plymouth Liaison Committee is the adopted Port User Group and the Cattewater Harbour Commissioners resolved to offer the required assurance at their board meeting on 27th January 2014.

This consultation seeks views, comments and/or observations on the matter, which should be forwarded to the Chairman by 28th February 2014.

This consultation is only relevant to the taking of powers. The actual Directions will be the subject of a further consultation once the Powers are granted.

2 x responses (RYA and Plym Yacht Club)

From: Gus Lewis RYA
Sent: 20 February 2014 09:23
To: info@plymouthport.org.uk
Cc:
Subject: RE: Cattewater Harbour Consultation on Harbour Directions

Dear Capt. Charlesworth

We refer to the Cattewater Harbour Commissioners' consultation on its proposal to seek designation for the purposes of giving harbour directions pursuant to section 40A of the Harbours Act 1964 (as inserted by the Marine Navigation Act 2013).

We note the Commissioners' proposal to ask the Port of Plymouth Liaison Committee to act as the Port User Group for the purposes of the Code of Conduct on Harbour Directions. We acknowledge that creating a separate PUG for Cattewater Harbour might be unnecessarily unwieldy but we are concerned that the Port of Plymouth Liaison Committee's membership is significantly wider than those representing the users of Cattewater Harbour, including for example local councillors and representatives of Government agencies. We would therefore suggest that Cattewater Harbour's PUG for the purposes of the Code of Conduct on Harbour Directions should in effect be a sub-committee of the Port of Plymouth Liaison Committee, comprising those members of that committee who represent the users of Cattewater Harbour.

Please do not hesitate to contact me if I can be of further assistance.

With kind regards.

Gus

Gus Lewis Head of Legal & Government Affairs
Royal Yachting Association

T:



RYA House, Ensign Way, Hamble, Southampton, Hampshire, SO31 4YA
www.rya.org.uk

Telephone response from Plym yacht Club

Peter Brian – Secretary of Plym Yacht Club rang with a query about what the increased powers may include.

He is particularly concerned with 2 issues :-

1. Could much higher price increases be levied ?
2. Could the leisure side be driven out and the port become entirely commercial ?

From: Tim Charlesworth [<mailto:harbourmaster@plymouthport.org.uk>]

Sent: 10 February 2014 14:21

To: moorings@plymyachtclub.org.uk

Subject: FW: re. Consultation - PYC

Peter

The concerns you have expressed to Sandra are understandable but misplaced. There will be no increase in prices and the port profile will remain the same mix.

Byelaws need parliamentary time to be repealed or enacted, & there are large volumes of legislative matters awaiting attention from government officers and ministers that are far more important matters than harbour byelaws. They are often delayed by several years by which time their content might be irrelevant to new activities.

To bypass these delays government has agreed (via the Marine Navigation Act 2013) to allow Harbour Authorities to take Powers of Harbour Directions so that appropriate measures can be put in place to better manage safety in the Harbour. Measures will be subject to consultation and PYC will be party to consultations.

I trust that this has allayed your concerns, and do rest assured that this will not lead to the demise of leisure boating in the port.

Regards

Capt. Tim Charlesworth FNI
Chief Executive & Harbour Master
Cattewater Harbour Commissioners

From: Sandra - CHC [<mailto:info@plymouthport.org.uk>]

Sent: 07 February 2014 09:36

To: CATTEWATER Plymouth - Tim Charlesworth

Subject: re. Consultation - PYC

PORT OF PLYMOUTH

**CATTEWATER HARBOUR
COMMISSIONERS**



**PLYMOUTH PILOTAGE
SERVICE**

www.plymouthport.org.uk

Statement of Assurance

I confirm that the following resolutions of the Cattewater Harbour Commissioners were duly passed at a meeting of the Cattewater Harbour Commissioners on 28th January 2014. The Harbour Authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions; in particular:

- a) to maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and,
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The Harbour Master is authorised to apply to the Secretary of State for Transport for the Cattewater Harbour Commissioners to be a 'Designated Harbour Authority' for the purposes of section 40A of the Harbour Act 1964.

Name : Robin Love - Chairman


Signed :

Date : 28th January 2014

Cattewater Harbour Commissioners / Plymouth Pilotage Service
VAT Reg. No. 143 0781 86

Cattewater Harbour.

BYE-LAWS.

Bye-laws made by the Cattewater Commissioners under the powers conferred on them by the Cattewater Harbour Order, 1915.

The Bye-laws shall come into operation one month after their confirmation by the Board of Trade.

The word "person" shall include Corporation, Definitions. whether aggregate or sole.

The word "Harbour" shall mean the Cattewater Harbour.

The expression "Harbour Master" shall include the Harbour Master and his assistants or any person acting under his authority.

The word "vessel" shall include ship, boat, lighter, or craft of every kind, whether navigated by steam or otherwise.

The word "master," when used in relation to any vessel, shall be understood to mean the person having the command or charge of the vessel for the time being.

The word "owner," when used in relation to goods, shall be understood to include any consignor, consignee, shipper, or agent for sale or custody of such goods, as well as the owner thereof.

The word "goods" shall include wares and merchandise of every description, and all articles in respect of which rates or duties are payable under the Order of 1915.

The word "rate" shall mean any rate or duty or other payment in the nature thereof payable under the Order of 1915.

The expression "the Collector of Rates" shall mean the person appointed by the Undertakers to collect the rates by the Order of 1915 authorized to be levied by them, and shall include the assistants of such collector.

The word "month" shall mean calendar month.

Stemming.

1. Before any vessel (excepting small coasters under one hundred feet in length and coasting steamers regularly trading to the Harbour) shall enter the Harbour, the master or some authorized person on his behalf, shall stem the vessel at the Harbour Master's Office, and give particulars of tonnage, length, breadth, draft fore and aft, and least rise of floor, on a form provided for this purpose by the Commissioners, and obtainable free of charge at the Harbour Master's Office, and shall then enter the Harbour at the time, and in such manner as directed by the Harbour Master.

Consignees to give quantities, etc.

2. Consignees must give to the Collector of Rates an account of kinds, quantities, and weights of goods intended to be unshipped before unshipment.

3. No person shall obstruct in any way the Harbour Master and Collector of Rates from proceeding on or searching any vessel within the Harbour.

Obstructing
Harbour Master
or Collector of
Rates.

4. No master or pilot shall lay or moor a vessel in the entrance to or within the Harbour without permission of the Harbour Master.

Mooring of
vessels.

5. No vessel shall be anchored in the fairway and approaches to the wharves and moorings.

Channel to be
kept clear.

Note.—A chart showing such prohibited area can be seen in the Harbour Master's Office.

6. The master of a vessel anchoring in the Harbour shall moor her with two anchors, and shall lower all sails and rig in any sliding bowsprits.

Vessels to moor
with two anchors,
etc.

7. The master of a vessel anchoring or mooring within the Harbour shall place and maintain watch buoys on her anchors.

Watch Buoys
on anchors.

8. All vessels must be properly watched and moorings and cables tended whilst lying within the Harbour.

Vessels to be
watched.

9. No vessel of more than one hundred feet in length shall be anchored within the Harbour. A vessel of more than one hundred feet in length shall be moored fore and aft to a wharf, buoy, or other mooring.

No vessel of more
than 100 feet to
anchor in the
Harbour.

10. No trawl or fishing net of any description shall be used within the limits of the Harbour.

Fishing nets.

11. During the discharge or loading of any bulk cargo, bunker coal, or ballast, or when any scaling is being done, efficient savealls shall be fixed to prevent any substance falling into the Harbour.

Savealls to be
fixed.

No permanent moorings to be laid.

12. No person shall lay any permanent moorings in the Harbour without the consent of the Commissioners.

Penalties.

13. Any person offending against any of the foregoing Bye-laws shall be liable on conviction to a penalty not exceeding forty shillings for each offence.

Given under the Common Seal of the Cattewater Commissioners this 19th day of March, 1927.

HAROLD ALGER,
Acting Chairman.



*The Board of Trade hereby allow and confirm the foregoing Bye-laws
This 31st day of March, 1927.*

GARNHAM ROPER,
An Assistant Secretary to the Board of Trade.

NOTICE.—The attention of masters and others is drawn to the Admiralty Regulations for the Dockyard Port of Plymouth.

Cattewater Harbour.

BYE-LAWS.

amending the Bye-Laws made by the Cattewater Commissioners on the 19th day of March, 1917, and confirmed by the Board of Trade on the 31st day of March, 1917.

THE CATTEWATER COMMISSIONERS in exercise of the powers and authority vested in them by the Cattewater Harbour Order, 1915, and of every other power thereunto enabling, DO MAKE THE FOLLOWING BYE-LAWS, that is to say:—

1. These Bye-laws may be cited as "The Cattewater Harbour (Amendment) Bye-laws, 1935," and shall come into operation on the expiration of fourteen days after the date upon which they are allowed and confirmed by the Minister of Transport. Short title and commencement.

2. In these Bye-laws words and expressions to which a special meaning is assigned by the Cattewater Harbour Bye-laws, 1917, have the same meaning as they have in the Cattewater Harbour Bye-laws, 1917. Interpretation.

The word "Quay" shall mean any quay, pier, jetty, wharf, landing stairs, shore, or other landing or loading place abutting on or within the Harbour.

The words "Petroleum Ship" shall mean any ship having on board or about to take on board a cargo the whole or any part of which consists of Petroleum Spirit or having discharged Petroleum Spirit if the holds and tanks have not been rendered free from inflammable vapour to the satisfaction of the Harbour Master.

3. Vessels using the Harbour, other than vessels which are manœuvring for the purpose of proceeding alongside or leaving the Admiralty Wharf at Turn-chapel, must not approach within a distance of ONE HUNDRED FEET of a Petroleum Ship moored alongside a quay. Prohibition of approach to PETROLEUM SHIPS.

Note:—A Petroleum ship will indicate the nature of her cargo by hoisting a red flag having a white ball in the centre by DAY and a red light at NIGHT.

4. The Master of any vessel which contravenes these Bye-laws shall for every such act be liable to a penalty not exceeding forty shillings. PENALTY.

Given under the Common Seal of the Cattewater
Commissioners this 22nd day of October, 1935.

WILLIAM H. MAY,
Chairman.



H. B. SPENCER,
Clerk.

The Minister of Transport hereby allows and confirms
the foregoing Bye-laws.

Signed on behalf of the Minister of Transport this 28th
day of October, 1935.

E. W. ROWNTREE,
Assistant Secretary.

**ADDITIONAL INFORMATION SOUGHT BY THE DEPARTMENT FOR TRANSPORT
REGARDING CATTEWATER HARBOUR COMMISSIONERS (CHC) APPLICATION**

DfT (a) As part of your rationale, it would be helpful to have more detail on the issues identified in your risk assessment that would be mitigated by acquiring the power to make harbour directions. Also, it would be useful to know what activities harbour directions would be useful for managing – perhaps this came out in the Commissioners deliberations on whether to seek the power.

CHC: Our risk assessment identifies the fact that activities taking place in the harbour create risk which needs managing. Current bylaws do not cater for these activities.

Over 800 vessel movements requiring pilotage per annum and the frequent activity (both random and organised) of yachts, dinghies and fishing vessels together create a mix of interaction which is currently managed by a code of conduct with no statutory authority.

The Port Marine Safety Code states “In addition, harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.”

The powers arising from Harbour Directions will be used to support a safety management system fit for purpose which protects various activities in the port.

DfT (b) The RYA’s response to your proposal to ask the Port of Plymouth Marine Liaison Committee (PPMLC) to act as the Port User Group (PUG) for the purposes of the Code of Conduct on Harbour Directions considers that the PPLC’s membership is significantly wider than those representing the users of Cattewater Harbour. Do the Commissioners concur with the RYA’s suggestion that the PUG should in effect be a sub-committee of the PPLC comprising those members who represent the users of Cattewater Harbour and propose to set up such a sub-committee? Has this been agreed with the PPMLC?

CHC: Yes, the Commissioners concur with the RYA observation, and yes, this has been agreed with the PPMLC.