

Annex C-7: Application of Falmouth Harbour Commissioners



Falmouth Harbour
Commissioners

Captain Mark Sansom DMS MNI
Chief Executive and Harbour Master
Ddi 01326 310995

44 Arwenack Street
Falmouth
Cornwall TR11 3JQ

Tel 01326 312285
Fax 01326 211352
Email hm@falmouthport.co.uk
Web www.falmouthport.co.uk

Miss C Wall
Ports Governance Branch
Maritime, Commercial and Infrastructure
Department for Transport Zone 1/22
Great Minster House
76 Marsham St
London SW1P 4DR

26 June 2014

Dear Miss Wall

APPLICATION FOR POWERS OF GENERAL DIRECTION

Falmouth Harbour Commissioners manage a statutory port within the Fal Estuary with port limits shown at Appendix 1. The Estuary is well used by both commercial and leisure traffic.

At present, the Port is regulated using a combination of Bye-Laws and national legislation. The enforcement policy and procedures are attached at Appendix 2.

The Harbour Authority wish to apply for powers to make general directions applying to the navigation of ships within its harbour area. The rationale for this application is as follows:

- To take into account the Guide to Good Practice accompanying the Port Marine Safety Code.
- To allow general directions to be made that will provide enforceable rules concerning navigation in particular areas or to take into account particular events to protect other harbour users from harm.
- To work with adjacent harbour authorities to allow consistent rules to be applied within connected waterways in order to provide greater clarity for the general public and the masters of ships.

It is not at this stage proposed to repeal any of the existing Bye-Laws but these will be reviewed on a case-by-case basis for each direction that is made. The applicant is aware that the definition of ship to which general directions may be applied is narrower than the definition of vessel governed by existing Bye-Laws and this will be taken into account when deciding upon the appropriate use of directions to ensure that an appropriate regulatory structure for all craft using the Harbour is maintained.

Falmouth Harbour Commissioners maintains effective consultation with harbour users and has a committee set up to regularly discuss matters with them. The Consultative Committee

proposes to form the basis of the Port Users Group with the membership broadened to include users that may be affected by a particular direction on a case-by-case basis.

A copy of the constitution of this Committee is attached to this application at Appendix 3.

Falmouth Harbour Commissioners intend to advertise their application and its purpose appropriately to local stakeholders using the media and web sites. It is intended to ask for comments to be sent to the Chairman of the Consultative Committee to provide some independence to the review process.

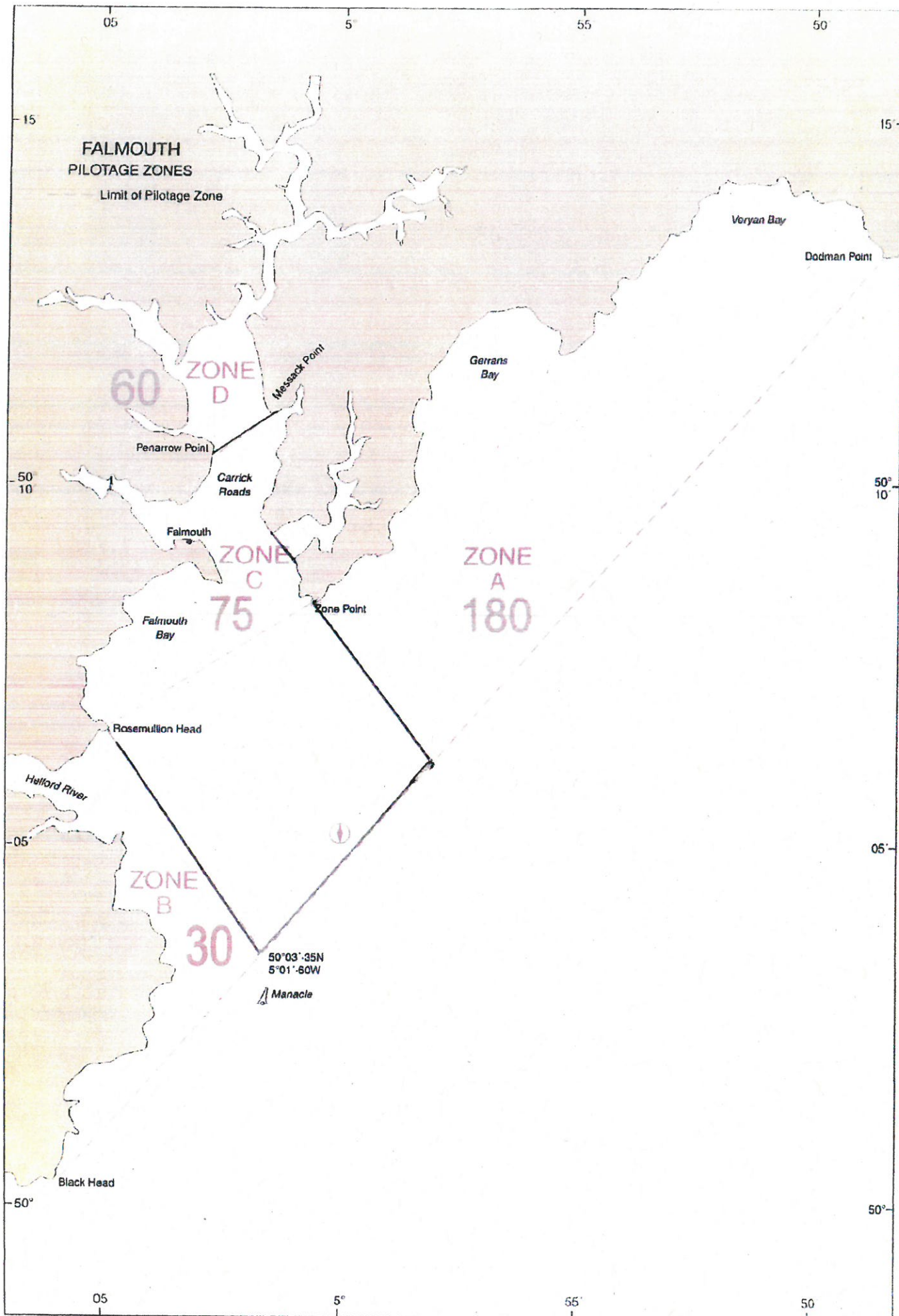
The Harbour Authorities responsible for the safety of navigation within the Fal Estuary maintain an Estuary Safety Committee. As part of this structure, a group of advisory members representing a wide cross section of activities undertaken afloat within the Estuary meets annually. Notes of the last meeting of the Group are attached at Appendix 4. An up-to-date list of these members is attached at Appendix 5 to assist the Department with its consultation. Communications can be forwarded to these individuals as required, on application to ourselves.

Falmouth Harbour Commissioners agrees to abide by the Code of Conduct that was agreed as part of the Marine Navigation Act 2013 and a declaration in the standard form is attached at Appendix 6.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Sansom', is written over a faint, illegible printed name.

Captain Mark Sansom
Chief Executive & Harbour Master





Falmouth Harbour
Commissioners

ENFORCEMENT POLICY AND PROCEDURES

POLICY

FALMOUTH HARBOUR COMMISSIONERS are a statutory Harbour Authority and have powers to make byelaws. Contravention of Byelaws may result in prosecution through the Magistrates Court.

The Commissioners may consider prosecution from time to time using other legislation such as the Merchant Shipping Act, the International Regulations for Prevention of Collision at Sea and the Pilotage Act should it be considered in the public interest to do so.

In making decisions about enforcement action, the Commissioners will act in wider public interest with a primary aim of securing a safe and pollution free environment.

ENFORCEMENT ACTION

Enforcement action can take the form of:

- (a) A warning.
- (b) Suspension or revocation of a licence issued in accordance with the Bye-laws.
- (c) A formal caution.
- (d) Prosecution.
- (e) A combination of any of the above.

ENFORCEMENT FACTORS

In considering the appropriate enforcement action, the Commissioners will take into account the following:

- (a) The risk of harm to the public and others.
- (b) What is in the public interest.
- (c) The seriousness of the complaint.
- (d) The explanation of the offender.
- (e) Whether the matter is a recurrence.
- (f) Whether there have been other contraventions of Bye-laws or Legislation.
- (g) The willingness of the alleged offender to prevent a recurrence of the incident.
- (h) The availability of witnesses.
- (i) The reliability of witnesses.
- (j) The sufficiency of evidence.

PROSECUTION

Prosecution will be considered in the following circumstances:

- (a) Where the alleged offence is a flagrant breach of bye-laws or legislation such that public safety or well being is put at risk.
- (b) Where the alleged offence involves failure to comply with a warning.
- (c) Where there is a history of similar offences.
- (d) Where the alleged offence involves risk of damage to the environment.
- (e) There are other public interest factors mitigating in favour of prosecution.

PROCEDURES

Collection of Evidence

1. Members of staff involved in enforcement are to be trained in the following areas:
 - a. Possible offences that they may encounter during the performance of their duties.
 - b. How to gather evidence to support of enforcement.
 - c. Any powers that they may have relating to the collection of evidence.
 - d. What to say to suspected offenders.
 - e. When to issue warnings.
 - f. When to instigate further action.
 - g. How to write statements.
2. The Deputy Harbour Master is responsible for ensuring that the patrol staff are adequately trained and that evidence is collected and presented properly.
3. In cases where serious oil pollution offences are being investigated the Harbour Master (includes the Deputy Harbour Master when deputising) should be the Investigating Officer. He shall ensure the following;
 - a. When investigating, that full use is made of the additional powers available in Section 259 of the Merchant Shipping Act 1995.
 - b. That the incident is reported to and discussed with the MCA at a suitable officer level as soon as possible.
 - c. That a caution is given to any witnesses volunteering statements (statements cannot be compelled).
 - d. Full use is made of the power to detain vessels under section 144 of the Merchant Shipping act to allow proceedings to be brought or further investigations to be undertaken.

REVIEWING THE EVIDENCE

4. Before any enforcement action is contemplated, the evidence shall be subject to a formal review to decide if there is a case to answer and substantial evidence in support of the case. The review shall be conducted by the Harbour Master with another Officer and a legal expert if required.

DECIDING ENFORCEMENT ACTION

5. The decision as to what level of enforcement action to take is to be taken the Board of the Harbour Commissioners. It is a prerequisite of tabling the matter for consideration that the evidence review has concluded that there is substantial (although not necessarily conclusive) evidence on which any prosecution could be based.

In deciding what action is to be taken, the Board shall consider the factors listed in the policy and also consider any aggravating or mitigating public interest factors such as:

- a. A conviction is likely to result in a significant sentence.
- b. The defendant was in a position of trust.
- c. Evidence that the offence was pre-meditated.
- d. The defendant has previous convictions relevant to the offence.
- e. The offence was committed as a result of a genuine mistake or misunderstanding.
- f. The defendant has put right the loss or harm that was caused.

The Board must record their reasons for taking the level of enforcement action decided upon.



Falmouth Harbour
Commissioners

CONSULTATIVE COMMITTEE

CONSTITUTION

Aims and Objectives

To represent a wide range of stakeholder opinion and viewpoint and to provide feedback and advice to the Harbour Board to assist in managing their undertaking in the best interests of their stakeholders.

The Consultative Committee is entrusted with the following mission;

To consider matters of interest to the Harbour Board related to the management, maintenance, improvement, conservation, protection and safety regulation of the Harbour and its navigation.

To provide advice and opinion to the Harbour Board on matters under consideration.

To identify matters of interest to harbour users and other stakeholders and make recommendations that they should be considered by the Harbour Board.

Membership

It is intended to make the Consultative Committee wide ranging in its viewpoints and its members will be selected to represent a wide range of stakeholder interests which may include (but are not limited to);

- Commercial shipping interests
- Leisure users
- Members of staff of Falmouth Harbour Commissioners
- Environmental interests
- Local authorities
- Regeneration discussion groups
- Fishing interests

The Committee may have up to seven members including one member nominated by the harbour Board. The Chief Executive will attend meetings to make reports and to act in an advisory capacity. The members will be selected by the Harbour Board from expressions of interest received. A term of membership will be limited to three years with members eligible to serve a maximum of two terms without a break and three terms in total.

Generally substitutes are not permitted to attend but observers may be permitted at the discretion of the chairman.

The Committee will elect from its voting membership at its first meeting and thereafter at its annual general meeting a chairman and may if it chooses to elect a vice chairman for the ensuing year.

Members will not be required to register interests but will be expected to declare an interest if appropriate before joining the debate.

The meetings will be minuted and the minutes circulated to the Harbour board at its next meeting. The Committee will be able to formulate recommendations which will be placed on the Agenda of the next Board Meeting.

Meetings

There will be meetings of the Committee in March, June, September and December. One to include the Annual General Meeting.

Special meetings may be called by the chairman if required. Notice of the requirement for a special meeting is to be given to the Chief Executive at least 7 days prior to any meeting being held.

A quorum shall consist of at least 5 members.

The Chief Executive will distribute a copy of all Board Minutes for the intervening period and will deliver a verbal report on any minute requested by members at the meeting.

Each voting member will be entitled to;

- a. Send agenda items to the Chief Executive of the Harbour Commissioners not less than 14 days prior to the date of the meeting.
- b. Raise urgent matters, not included on the agenda, provided that the chairman is in agreement.
- c. Receive copies of the agenda and accompanying papers in advance of the Meeting. Usually these will be sent out seven days prior to the meeting but in exceptional circumstances a lesser period may be chosen.

There will be an annual meeting of the Consultative Committee with the Harbour Board.

Matters for Discussion

The Chairman has a remit to permit discussion on any subject consistent with the aims and objectives of the Committee. The following are examples;

- Reports relating to experiences of harbour users.
- Proposals for exercises to establish and monitor stakeholder opinion.
- Appropriate targets to measure the effectiveness of FHC.
- Identification of conflicts between different sectors of harbour users.
- Providing anecdotal feedback relating to FHC and the public perception of its management of the Harbour.
- Recommendations as to non statutory consultation procedures for FHC proposals.
- Delivery of FHC strategy or plans.
- Stakeholder communications including the annual public meeting.
- Review of the constitution and membership of the Consultative Committee.



Falmouth Harbour
Commissioners

ASSURANCE

I confirm that the following resolutions of Falmouth Harbour Commissioners were duly passed at a meeting of the Falmouth Harbour Board on 13 June 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 Chief Executive is authorised to apply to the Secretary of State for Transport for Falmouth Harbour Commissioners to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Name

Signed

Date

MARK SANSOM

Chief Executive &
Harbour Master


.....

27/6/14
.....



Falmouth Harbour
Commissioners

44 Arwenack Street
Falmouth
Cornwall TR11 3JQ

Captain Mark Sansom DMS MNI
Chief Executive and Harbour Master
Ddi [REDACTED]

Tel [REDACTED]
Fax [REDACTED]
Email hm@falmouthport.co.uk
Web www.falmouthport.co.uk

Our Ref: FHC/14/HM

Caroline Wall
Ports Governance Branch
MCI - Maritime Commercial & Infrastructure
Department for Transport
2/29-2/34, 2nd Floor, Great Minster House,
33 Horseferry Road
LONDON SW1P 4DR

19 November 2014

Dear Caroline,

Consultation Exercise – Application for Powers of General Direction

I am writing to confirm that we have completed a local consultation exercise on our application for Powers of General Direction in accordance with the Marine Navigation Act 2014.

We only had two written responses to the consultation which was rather less than we were hoping for, but given the considerable promulgation that we gave to the exercise, believe it reflects that are stakeholders are comfortable for FHC to have these powers and have few concerns.

As well as promulgating our application in the press (see attached), I also spoke about it on Radio Cornwall and the subject was discussed with our audience of about 30 people at our public meeting.

Of the responses received, both indicated that they would be willing to be contacted by the Department and so I have enclosed both forms in case you wish to follow this up.

Copies of the responses have gone to the Chairman of our Consultative Committee who has also received a copy of this letter. I have asked him to provide any additional comments to you on behalf of the Consultative Committee.

Falmouth Harbour Commissioners consider that their application has been fully consulted and is generally supported by stakeholders that may be affected.

A list of our advisory committee members with such e-mail addresses as we have been able to obtain is attached as previously discussed.

Yours sincerely

Captain Mark Sansom
Chief Executive & Harbour Master

Consultation over port control

A PUBLIC consultation has been opened on an application for new powers which would give Falmouth's port authority more control over ship traffic in the harbour.

Falmouth Harbour Commissioners (FHC) is inviting feedback from boat users on the application for Powers of General Direction.

If successful, FHC will be able to make directions for ships navigating

within the harbour, which would ultimately improve safety.

Harbour master and FHC chief executive captain Mark Sansom said: "FHC currently has powers to make bylaws and to issue special directions to ships using the harbour but the general direction will allow us to operate a more flexible approach to harbour management."

"The primary use of these powers is

envisaged to be the compulsory zoning of particular activities and temporary directions to assist with the management of events, such as tall ships.

"The powers could also allow us to introduce speed limits in areas if there was a safety case to do so."

The 28-day consultation is now open and will close on October 17.

For more information, visit www.falmouthport.co.uk

AS LTD.

Public Notices



FALMOUTH HARBOUR COMMISSIONERS - PUBLIC CONSULTATION

Falmouth Harbour Commissioners is the authority responsible for regulating and managing marine activities in Falmouth Harbour.

Over the next four weeks we are inviting views from harbour users about our application to be granted Powers of General Direction in accordance with the Marine Navigation Act 2013.

As part of the application process, a summary of harbour users responses will be submitted to the Secretary of State for Transport after the consultation closes on 17th October 2014 to assist with determination of the application.

For more information about application for Powers of General Direction, or to submit feedback, please visit www.falmouthport.co.uk.

West Briton

FHC looking for feedback

Falmouth Harbour Commissioners (FHC) is inviting feedback from Falmouth harbour users as part of an application for Powers of General Direction.

The application for the powers, which if successfully granted, will allow FHC to make directions for ships navigating within the harbour.

The Marine Navigation Act of 2013 gives harbour authorities the right to apply for these powers. Applicants for these powers have to make a declaration that they agree to abide by a code of

conduct that ensures that any objections to directions receive proper consideration.

Feedback from the consultation period, which is required to last for at least 28 days, will be collated by FHC's Consultative Committee Chairman, Ian Munday, who will produce a summary of responses. The summary will be sent to the Secretary of State for Transport for consideration as part of the application.

Captain Mark Sansom, Harbour Master and FHC's chief executive, said: "FHC currently has powers to make Bye-Laws and to issue special directions to ships using

Business Cornwall

Harbour users to have say on rules

FALMOUTH Harbour Commissioners are applying for powers which will enable them to introduce new rules aimed at improving safety, and are inviting comments from local harbour users.

If granted, the application for Powers of General Direction will allow FHC to make directions for ships navigating within the harbour. The Marine Navigation Act of 2013 gives harbour authorities the right to apply for these powers. Applicants have to make a declaration that they agree to abide by a code of conduct that ensures that any objections to directions receive proper consideration.

Feedback from the consultation period, which is required to last for at least 28 days,

■ By HELEN DALE

helen.dale@packetseries.co.uk

will be collated by FHC's consultative committee chairman, Ian Munday, who will produce a summary of responses. This will be sent to the Secretary of State for Transport for consideration as part of the application.

Captain Mark Sansom, harbour master and FHC chief executive, said: "FHC currently has powers to make bye-laws and to issue special directions to ships using the harbour, but the General Direction will allow us to operate a more flexible approach to harbour management.

"The primary use of these powers is

envisaged to be the compulsory zoning of particular activities and temporary directions to assist with the management of events, such as Tall Ships.

"The powers could also allow us to introduce speed limits in areas if there was a safety case to do so."

Mr Munday, added: "The consultative committee can see the benefit of FHC having more flexible powers to manage and improve safety in the harbour. We would encourage harbour users to look carefully at the proposal and take part in the consultation." The consultation will close on October 17.

■ Anyone requiring more information about FHC's application for Powers of General Direction should visit www.falmouthport.co.uk.



Falmouth Harbour
Commissioners

FALMOUTH HARBOUR COMMISSIONERS - PUBLIC CONSULTATION

FALMOUTH HARBOUR COMMISSIONERS is the authority responsible for regulating and managing marine activities in Falmouth Harbour.

Over the next four weeks we are inviting views from harbour users about our application to be granted Powers of General Direction in accordance with the Marine Navigation Act 2013.

As part of the application process, a summary of harbour users' responses will be submitted to the Secretary of State for Transport after the consultation closes on 17th October 2014 to assist with determination of the application.

For more information about application for Powers of General Direction, or to submit feedback, please visit www.falmouthport.co.uk.

ENDS

September 15, 2014

FALMOUTH PENRYN
Packet

Falmouth Harbour Commissioners make bid for more power



Falmouth Harbour Commissioners

Falmouth Harbour Commissioners make bid for more power

First published Thursday 18 September 2014 in News

Falmouth Harbour Commissioners are applying for powers which will enable them to introduce new rules, and are inviting comments from local harbour users.

If granted, the application for Powers of General Direction will allow FHC to make directions for ships navigating within the harbour. The Marine Navigation Act of 2013 gives harbour authorities the right to apply for these powers. Applicants have to make a declaration that they agree to abide by a code of conduct that ensures that any objections to directions receive proper consideration.



Feedback from the consultation period, which is required to last for at least 28 days, will be collated by FHC's consultative committee chairman, Ian Munday, who will produce a summary of responses. This will be sent to the Secretary of State for Transport for consideration as part of the application.

Captain Mark Sansom, harbour master and FHC chief executive, said: "FHC currently has powers to make bye-laws and to issue special directions to ships

using the harbour, but the General Direction will allow us to operate a more flexible approach to harbour management.

"The primary use of these powers is envisaged to be the compulsory zoning of particular activities and temporary directions to assist with the management of events, such as Tall Ships.

"The powers could also allow us to introduce speed limits in areas if there was a safety case to do so."

Mr Munday, added: "The consultative committee can see the benefit of FHC having more flexible powers to manage and improve safety in the harbour. We would encourage harbour users to look carefully at the proposal and take part in the consultation." The consultation will close on October 17.

Anyone requiring more information about FHC's application for Powers of General Direction should visit www.falmouthport.co.uk.

Send us your news, pictures and videos

Your local superstore is now

BIGGER & BETTER

Try OUR NEW CAFE! Visit our all new Furniture Department

Spend £30 or more in-store & receive **£10 OFF** simply pick up a voucher in-store. Offer valid 20 Sept - 10 Oct 2014.

Address: Treliske Ind. Est. Truro, TR1 3LP

The RANGE
Home, Leisure & Garden

KEEP IN TOUCH WITH LOCAL NEWS >

Get news alerts sent to your inbox

MOST READ STORIES

- 1 Attempted murder arrest after woman shot in the head in car park
- 2 Workmen say 'pants' to new 'Ann Summers' store in Helston
- 3 Truro motorbike crash leaves two with 'life changing injuries'
- 4 Moped rider in Helston was twice drink driving limit
- 5 Moonlight Memory Walk returns to Falmouth: PICTURES
- 6 Falmouth man fined and banned for driving with no insurance
- 7 Fuel-price war as supermarket cuts 5p a litre off petrol and diesel
- 8 Two Falmouth council staff take a tumble and break bones on walk to work
- 9 Falmouth Primary Academy reopens after £3 million refurbishment
- 10 Steps taken to stop booze blight near Helston Football Club
- 11 Fuel on fire after A30 crash
- 12 Falmouth man admits assault in hospital over rucksack containing cider
- 13 18-year-old girl in 'life threatening condition' after Helston collision
- 14 Councillor calls number of late night Helston taxis 'an absolute joke'
- 15 Three injured in Carbis Bay crash
- 16 Phone stolen from Falmouth bar
- 17 Helston police to target speeding drivers
- 18 Former hospital trust vice chairman calls MP 'hypocrite' over hospital parking criticism
- 19 FOOTBALL: Cullompton Rangers 5-2 Falmouth Town
- 20 Pendennis apprentices' achievements celebrated



Falmouth Harbour
Commissioners

POWERS OF GENERAL DIRECTION

CONSULTATION

Background

The Marine Navigation Act of 2013 gave Harbour Authorities the right to apply to the Secretary of State for Transport for Powers of General Direction. The Powers can be used to make rules (directions) relating to navigation within the Harbour Authority's area.

Falmouth Harbour Commissioners (FHC) have made an application for these powers. The decision as to whether or not to award them will be made by the Secretary of State for Transport taking into account the views of the public.

You are therefore invited to submit your views as to whether the FHC should be awarded these powers using the attached form. Your opinions will be received by the Chairman of the FHC Consultative Committee who will produce a summary of consultation responses for the Secretary of State to consider. Respondents may also be contacted directly by the Department for Transport who may undertake their own consultation.

A fact sheet has been prepared to help answer questions about the application. A feedback form is also included.

POWERS OF GENERAL DIRECTION

FACT SHEET

What are Powers of General Direction?

These powers enable harbour authorities to give directions to ships within their harbour area. The directions can only relate to matters affecting the safe navigation of ships. They can be issued to all ships or particular classes of ships and act as standing instructions which are legally enforceable.

Why are they needed?

Harbour authorities are responsible for the safe management of their harbours. They have a framework of powers with which to undertake this. Currently Falmouth Harbour Commissioners has powers to make Bye-Laws and to issue special directions to ships using the harbour. They can also make directions requiring certain vessels to carry pilots. General directions will allow a more flexible approach to harbour management and will reduce delays between identifying safety issues and regulating activities. This can be important where new activities are undertaken or an accident identifies the need for additional regulation.

How will they be used?

The primary use of these powers is envisaged to be the compulsory zoning of particular activities and temporary directions for the management of events such as tall ships races where certain exclusion zones need to be maintained. They could also be used to introduce speed limits in certain areas if there was a safety case to do so.

How are they made?

The Directions are made by a harbour authority after a process of consultation with those harbour users that may be affected by them. In order to receive the Powers, harbour authorities have to agree to abide by a code of conduct that ensures that there is independent consideration given to the case for the powers and attempt to overcome objections to them. There is a legal requirement for harbour authorities to advertise their proposed directions for at least 28 days and to promulgate any new directions in the press.

How can I find out more?

There are a number of Documents available via the Falmouth Harbour Commissioners Web Site including:

- FHC expression of interest
- FHC application for Powers of General Direction
- Department for Transport Guidance on Harbour Directions
- National Directions Panel Supplementary Guidance: Code of Conduct for Harbour Directions

POWERS OF GENERAL DIRECTION FEEDBACK FORM

(also available as an online survey at www.falmouthport.co.uk)

1. Are you in favour or against Falmouth Harbour Commissioners having powers of General Direction? (Please tick box below)

IN FAVOUR

AGAINST

2. If **IN FAVOUR** please tick the statements that best summarise your views:

a. Additional Regulations will improve safety in the harbour.

b. Enforceable regulations will be more effective than voluntary zones.

c. The powers will allow FHC to respond much quicker to new activities and risks.

d. Other reasons (please state).

3. If **AGAINST** please tick the statements below that best summarise your objection:

a. Falmouth Harbour Commissioners should not be trusted with these additional powers.

b. There is too much regulation already and additional powers are not necessary.

c. I am concerned that the new powers will be used to unreasonably restrict my use of the Harbour.

d. Other reasons (please state).

POWERS OF GENERAL DIRECTION

FEEDBACK FORM (cont.)

(also available as an online survey at www.falmouthport.co.uk)

4. Are you responding as an individual or as a representative of a user group?
(Please tick below)

INDIVIDUAL

GROUP REPRESENTATIVE

5. Please give your name; if a group representative, please state which group or organisation you represent.

Name:

Organisation:

6. Are you willing to be contacted again as part of this consultation?

YES

NO

7. If YES, please give your contact details below

Address:

Email: