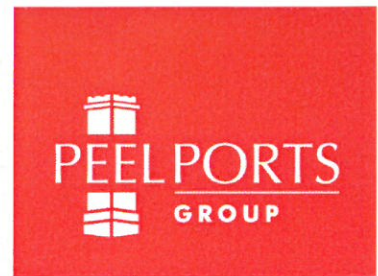


# Annex C-11: Application of Heysham Port Limited (Peel Ports)



27<sup>th</sup> June 2014

The Secretary of State for Transport  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

BY e-mail to: Ports@dft.gsi.gov.uk

Dear Sir

**Heysham Port Limited**  
**Harbours Act 1964 s.40A**  
**Application for powers to issue general harbour directions**

I would like to confirm that Heysham Port Limited (HPL) wishes to apply to become a designated harbour authority for the purposes of s.40A of the Harbours Act 1964, in order to have the power to issue general harbour directions pursuant to that section.

We note from your guidance document that applications should set out reasons for seeking the new powers. To address that aspect we enclose a copy of the Risk Assessment carried out by HPL dated 5<sup>th</sup> March 2014. As you will see, the Risk Assessment considers inter alia the following aspects: -

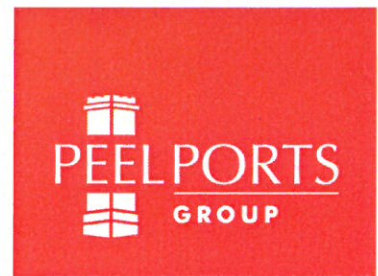
- That HPL's existing suite of byelaws is outdated.
- That the PMSC 'Guide to Good Practice' recommends that harbour authorities keep their powers under review and seek to improve these where appropriate.
- That the PMSC Audits have noted that existing powers are outdated.
- That traffic density and the potential for traffic conflicts are increasing.

As you will be aware, HPL's area of jurisdiction is the harbour and a wide area of Morecombe Bay and encompasses a high density of offshore and Ro-Ro Traffic. If HPL were to update its byelaws, it would undoubtedly be a lengthy process and a complex document.

Whilst recast byelaws might well anticipate every eventuality, there is always the possibility those new and unusual situations might not be covered by new byelaws. The power to issue general directions will ensure a quicker response to new and unusual situations and the management of safety in the Port.

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It therefore appears to HPL that the ability to issue harbour directions gives much greater flexibility than would be the case with new byelaws. Equally, from the perspective of harbour users, it is arguable that harbour directions would be much more readily ascertainable and (web) accessible, and give port users a clearer steer on what they may or may not do, than would be the case if port users were expected to trawl through a detailed encyclopaedia of new byelaws to check whether they contained applicable restrictions. Moreover, the ability to issue harbour directions would potentially provide an effective means of implementing any issues flowing from Port Security and the two nuclear power stations, immediately adjacent to the harbour, which the harbour authority might find it appropriate to implement.

HPL has regularly reviewed its suite of powers pursuant to the PMSC, and has concluded that the power to issue general directions pursuant to s40 is the appropriate way forward to ensure the continued safe and efficient management of the Port in a modern manner.

As part of an overall review of the Peel Ports` Group byelaws it is the intention to amend and or revoke as appropriate in respect of Heysham, the Heysham Harbour Byelaws 1979. With regard to the National Direction Panel`s non-statutory code of conduct, HPL is supportive of the code of conduct and is agreeable to abiding by its terms, save only in circumstances where it is not reasonably practicable to do so. For example, if circumstances arose where in HPL`s reasonable opinion the available timescales did not allow for 14 days prior consultation with the Port Users Group (as required by the code of conduct) in addition to the statutory publicity period of 28 days, then it would seem appropriate in such circumstances for the statutory requirements alone to prevail over the non-statutory requirements, i.e. where adherence to the code of conduct might run the risk of negating the benefits of the proposed harbour direction. We enclose a proposed letter of assurance and look forward to hearing whether its terms are acceptable.

With regard to informal consultation prior to formal public consultation on a proposed designation order, we can confirm that HPL intend to:

Facilitate the next meeting of the Port Users Group, which has representatives from HPL, terminal operators, pilots and vessel owners and operators

The application for powers of harbour direction will be on the agenda, and minuted responses will be provided to you. Unfortunately to date, due to dairy commitments and holidays, we have been unable to convene a Port Users Meeting.

Accordingly, by the end of July 2014 we will have been able to provide you with feedback from a broad spectrum of port users, and trust that the process of applying for harbour direction powers can commence, on the understanding that the prior consultation feedback will shortly follow.

Yours faithfully

A handwritten signature in black ink, appearing to read "J.F. Gallimore".

**Captain S.F. Gallimore  
Group Harbour Master  
Peel Ports Group Limited**

**Heysham Port Limited**  
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# RISK ASSESSMENT

<b>Name of the Risk to be assessed</b>	Harbour Directions Power
<b>Location</b>	Port of Heysham SHA
<b>Date Considered</b>	5th March 2014
<b>Items Considered</b>	
<a href="#">Whether to apply to Secretary State for Transport for Harbour Directions</a>	

<b>Impact</b>	Severe	3	6	9
	Moderate	2	4	6
	Minor	1	2	3
	Low	Medium		
	High			
	<b>Likelihood</b>			

	Unacceptable level of risk
	Acceptable level of risk with caution
	Acceptable level of risk

**Process:** Make an assessment of all the risks involved, considering at least the items in the adjacent table and assessing both before and after the proposed change. Having made your assessment enter the appropriate number against each Impact and Likelihood. Use the table above to determine the consequential overall risk.

<b>Title</b>	<b>Name / Signature</b>	<b>Date</b>
Group Harbour Master	<i>S. Gallimore</i> Stephen Gallimore	5/3/14
Port Director	<i>D. Huck</i> David Huck	5.3.14

<b>Overall Impact and Likelihood Assessment</b>	Considerations will include but not limited to the following	Considered	Record of amplifying comments against consideration number - if required
1	Are existing powers "fit for purpose"	Yes	Existing byelaws are outdated
2	Port Marine Safety Code Guide to good Practice	Yes	Recommendations that SHA seek new powers
3	PMSC Audits	Yes	Observes that existing powers are outdated
4	Traffic density, type, size, draft and speed	Yes	Increasing
5	Traffic patterns to be considered with types of vessels	Yes	Increasing
6	Existing obstructions and developments	Yes	Harbour Directions will assist
7	Planned new obstructions and developments	Yes	Harbour Directions will assist
8	Local knowledge of users including the availability of pilotage	Yes	HD's will assist in Harbour Management
9	Local Port Service	N/A	Assist in managing leisure events
	Information	Yes	
	Notice to Mariners	Yes	

Risk Assessment	Before	After	DECISION
Impact	3	3	Apply to Secretary of State for Transport for the power to make Harbour directions for the management of safety in the Port of Manchester
Likelihood	2	1	
Assessed Risk	6	3	

## ASSURANCE

### Heysham Port Limited

I confirm that the following resolutions of Heysham Port Limited were duly passed at a meeting of Heysham Port Limited on 29 April 2014.

The harbour authority has had regard to the content of and agrees, save only in circumstances where it is not reasonably practicable to do so, 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.

Mark Whitworth is authorised to apply to the Secretary of State for Transport for Heysham Port Limited to be designated as a designated harbour authority for the purposes of Section 40A of the Harbours Act 1964.

Name: Mark Whitworth

Signed



Date

29 April 2014

9<sup>th</sup> September 2014

The Secretary of State for Transport  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

**By e-mail to: [Ports@dft.gsi.gov.uk](mailto:Ports@dft.gsi.gov.uk)**

Dear Caroline

**The Manchester Ship Canal Company Limited and Heysham Port Limited  
Harbours Act 1964 s.40A  
Application for powers of harbour direction**

You have asked for us to clarify the statement below which is found in our application letters:-

*"With regard to the National Direction Panel's non-statutory code of conduct, MSCC / HPL is supportive of the code of conduct and is agreeable to abiding by its terms, save only in circumstances where it is not reasonably practicable to do so. For example, if circumstances arose where in MSCC's / HPL's reasonable opinion the available timescales did not allow for 14 days prior consultation with the Port Users Group (as required by the code of conduct) in addition to the statutory publicity period of 28 days, then it would seem appropriate in such circumstances for the statutory requirements to prevail over the non-statutory requirements, i.e. where adherence to the code of conduct might run the risk of negating the benefits of the proposed harbour direction."*

By way of example I offer that it may be the case that in order to maintain the safety of navigation or in conserving the harbour, in an unforeseen or un-notified circumstance, the movement or navigation of all or certain vessels may need to be regulated or the vessels may need to be excluded from an area or areas of the harbour for a significant period of time requiring a general harbour direction rather than a special direction. The addition of a 14 day consultation period ahead of the 28 day notice period may in the circumstances at the time not be a practical or appropriate in the overall interests of the safety of navigation in the harbour. For instance, where an explosion risk existed from say unexploded ordinance or other explosive source, a possible mitigation of the risk might be to immediately exclude all vessels from a zone in the harbour around the site.

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Company Limited**  
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I trust this clarifies that only where the Code of Conduct does not allow for the statutory duties of the harbour to be fulfilled, should the requirements of the Code of Conduct be relaxed.

Yours sincerely

A handwritten signature in black ink, appearing to read "S.F. Gallimore".

**Captain S.F. Gallimore**  
**Group Harbour Master**

**The Mersey Docks and Harbour  
Company Limited**  
Maritime Centre  
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## **HEYSHAM PORT USERS GROUP – RE. HARBOUR DIRECTIONS**

Extract from Heysham Port Users Meeting Notes from 13 November 2014

### **“4. Harbour Directions**

The Port of Heysham currently derives its statutory powers from bylaws that are extremely time consuming and expensive to change. Many of these bylaws are significantly out dated and need to be repealed or significantly amended but to do so is prohibitively challenging. The move to Harbour Directions will facilitate a full review of all bylaws and empower the Port to set new directions through local consultation rather than Parliamentary process. In order to move to Harbour Directions, the Port Users must form a formal working group to review proposed changes and will be consulted 14 days prior to the wider consultation being initiated. Whilst the Port Users Group will not have power of veto, they can initiate an independent review should a proposed change not be agreed.

This applies to General Directions only as Pilotage Directions are set by alternative statute.

In order to progress this, SG [Captain S. F Gallimore] requested that Port Users agree to the adoption of Harbour Directions and commit to forming a working group. There was a general agreement to this effect from all represented user companies with the request to provide the Code of Conduct before establishing the details of the User Group. These documents are available at the following url:

<https://www.gov.uk/government/publications/harbour-directions>

**Action 2: Heysham Port Users to refer to link above and form user-group**

Extract from E-mail 20 November 2014 from Captain S.F. Gallimore, Group Harbour Master, Peel Ports Group Ltd

“The way the [Heysham] Port User Group works has always been facilitated by the SHA [= statutory harbour authority – Peel Ports Group Ltd] so I have asked for them to set up a Working Group specifically for harbour directions consultations.”