

Annex D-4: Application of the Duchy of Cornwall



DUCHY of CORNWALL

Land Steward, Western District and Isles of Scilly: Chris Gregory MVO BSc FRICS

Caroline Wall
Ports Governance
Maritime Commerce & Infrastructure
Department for Transport
Zone 2/32 Great Minster House
33 Horseferry Road
LONDON SW1P 4DR

9th April 2016

Dear Ms Wall

POWERS OF HARBOUR DIRECTION: APPLICATION FOR DESIGNATION ST. MARY'S HARBOUR – DUCHY OF CORNWALL

His Royal Highness The Duke of Cornwall is the Statutory Harbour Authority (SHA) for St. Mary's Harbour in the Isles of Scilly. The function of the SHA is affected by the Duchy of Cornwall Estate (DoC). In order to assist the DoC in managing and running a safe and efficient harbour and in particular discharging the responsibilities relating to the safety of vessels and people within the harbour (including navigational safety) and the protection of the port environment, the DoC wish to apply to be designated as a designated harbour authority with the power to make harbour directions.

Rationale

As required by the Port Marine Safety Code and as also part of an on-going Harbour Revision Order, the DoC have carried out a review of their existing statutory powers (including local legislation and byelaws) with the assistance of their legal advisors.

This review confirmed that the DoC do not have powers of general directions. The DoC do have the powers to make byelaws, they are a Competent Harbour Authority for pilotage purposes within the Isles of Scilly and the Harbour Master may issue special directions under section 52 of the Harbour Docks and Pier Clauses Act 1847.

The lack of powers for the DoC or its harbour Master to issue general directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship, is considered by the DoC to hinder them in the fulfilment of their statutory duties.

The Port Marine safety Code advises at paragraph 3.4 that *'Harbour authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not already have them.'*

The SHA have made an application for a Harbour Revision Order (St. Mary's (Isles of Scilly) Harbour Revision Order 2015) which is currently under review by the applicant following the consultation process. Provisions granting powers of general direction were included as part of the HRO proposals however, the review process may take some time and should the HRO not be issued, there is a risk that the current window for applications for designation as a designated harbour authority, may close, resulting in the powers not being secured by the SHA. The SHA will therefore monitor progress of the HRO and this application under s40A and take such actions as may be required, in consultation with DfT to ensure that the powers granted are not duplicated.

In addition, the number of vessels arriving at St. Mary's Harbour has risen in recent years and the use of harbour directions with respect to 'ships' (as defined in the Harbours Act 1964) would greatly assist in ensuring that the safety issues related to such an increase in traffic can be effectively managed by the Harbour Master and DoC.

With St. Mary's Harbour handling approximately 95% of all freight brought into/out from the Isles of Scilly and with thriving leisure and fishing sectors also, it is vital that the safety of all port users remains a priority and the use of harbour directions would greatly assist in this area.

DETAILS OF ANY PROPOSAL AMENDING OR REPEALING ANY STATUTORY PROVISION OF LOCAL APPLICATION

The DoCs current byelaws date from 1963. These byelaws have been reviewed as part of the statutory harbour power review carried out by the DoC and its legal advisors. As recommended by paragraph 4.4 of the Code of Conduct it is the DoCs intention to update these byelaws (including revocation/amendment of any existing byelaws which might otherwise conflict with harbour directions) at the same time as making harbour directions (providing the DoCs application to become a designated harbour authority is successful). Compatibility with any harbour directions the DoC may wish to introduce can then be ensured.

Therefore, at this time, the DoC is not requesting that any local enactment be amended or repealed in the Designation Order.

CONSULTATION

The DoC carried out consultation as part of its application for the HRO submitted to the MMO in April 2015.

The DoC is currently engaged in consultation with its Harbour User Group seeking their views and responses as to the single topic of general directions. The consultation document (annex A) and the DfT Harbour Direction Guidance Document is placed on the harbour website. Copies are also available at the harbour office and at the DoC main office on St. Mary's (Hugh House).

A full list of members of the Harbour Users Group is included in annex B.

The DoCs application to be designated with powers of general direction was discussed once again with the Harbour Executive Committee in April 2016

CONSULTATION RESPONSES

A summary of all consultation responses will be forwarded to the DfT once consultation closes on 9th May 2016.

CODE OF CONDUCT STATEMENT

See signed Statement of Assurance at Annex C
The St. Mary's 'Harbour Users Group' is the DoCs adopted Port Users group

Yours sincerely



Duty Holder / Land Steward Western District & the Isles of Scilly

ANNEX A

Application for Powers of General Directions Consultation

His Royal Highness The Duke of Cornwall is the Statutory Harbour Authority (SHA) for St. Mary's Harbour, wishes to proceed with an application to the Department of Transport (DfT) for General Powers of Harbour Direction.

Under the requirements of the Port Marine Safety Code the SHA have reviewed their existing statutory powers with their legal advisors and it has been confirmed that they do not have powers of general directions.

The SHA have made an application for a Harbour Revision Order (St. Mary's (Isles of Scilly) Harbour Revision Order 2015) which is currently under review by the applicant following the consultation process. Provisions granting powers of general direction were included as part of the HRO proposals however, the review process may take some time and should the HRO not be issued, there is a risk that the current window for applications for designation as a designated harbour authority, may close, resulting in the powers not being secured by the SHA.

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". 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.

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 specify requirements for no deficiency in machinery; and,
- d. 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 DoC 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 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 St. Mary's Harbour, Harbour Users Group is the adopted Port User Group and the St. Mary's Harbour Executive Committee committed to offer the required assurance at their board meeting on 30th January 2014.

This consultation seeks views, comments and/or observations on the matter, which should be forwarded to Dale Clark (Harbour Master), St. Mary's Harbour Office, The Quay, St. Mary's, Isles of Scilly TR21 0HU or hm@stmarys-harbour.co.uk by 8th May 2016.

A copy of this consultation is available to view at St. Mary's Harbour Office and also the DoCs Hugh House office for the duration of the consultation.

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.

ANNEX B

LIST OF MEMBERS FOR ST. MARY'S HARBOUR USERS GROUP

| | |
|-----------------|--|
| Jeremy Phillips | Senior Pilot, Harbour User (leisure) |
| Steve Hicks | RNLI, Local Boatman & Pilot, Harbour user (leisure) |
| Andy Daintree | Isles of Scilly Steamship Company (ISSCo) |
| Mervyn Bird | ISSCo |
| Robert Francis | Vice chair of Isles of Scilly Fisherman's Association (ISFA) |
| Sgt Colin Tylor | Local Police |
| Sue Pritchard | Council of the Isles of Scilly (Maritime Officer) |
| Phil Woodcock | RNLI |
| Peter Hicks | ISSCo, RNLI, Harbour User (leisure) |
| John Peacock | St. Agnes Boating Services |
| Dave Hooper | Tresco Estate Boating Services |
| Mike Nelhams | Tresco Estate |
| Dean Whillis | Tresco Estate |
| James Stedeford | Falcon Boating (Independent) |
| Gerald Thompson | Local Agent (cruise ships), Harbour User (leisure) |
| Joe Pender | St. Mary's Boatmen's Association (SMBA) |
| Tim Fortey | Calypso (Independent boating rep) |
| Richard Mills | Sailing School, RNLI & Harbour User (leisure) |
| Neil Jenkins | ISFA |
| Ian Sibley | Quay Tenant & Harbour User (leisure) |
| Keith Buchanon | Quay Tenant & Harbour User (leisure) |
| Delwyn Thompson | Tresco Shuttle (taxi transfers) |
| Luke Paulger | Paulgers Transport (taxi transfers) |
| Peter Carss | Scillonian Shellfish Diving Services |

ANNEX C


I confirm that the following resolutions of the Duchy of Cornwall were duly passed at a meeting of the Harbour Executive Committee on 8th April 2016.

The Duchy of Cornwall 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 Duty Holder is authorised to apply to the Secretary of State for Transport for the Duchy of Cornwall to be designated as a designated harbour authority for the purposes of section 40A of the Harbours Act 1964.

Name 
.....

Signed 
.....

Date 8/4/16
.....

Caroline Wall

From: Harbour Master <hm@stmarys-harbour.co.uk>
Sent: 16 May 2016 10:42
To: Caroline Wall
Cc: [REDACTED]
Subject: RE: ST MARY'S HARBOUR
Attachments: Powers of General Direction from mjs.docx

Good morning Caroline.

The 1 month consultation for the application for power to give general directions closed on the 9th May and I attach the only response we received from our consultation with the Harbour Users Group.

Please do not hesitate to contact me if you wish to discuss this further or require further information.

Best regards,

Dale

St Mary's Harbour informal consultation with harbour users:

Note of telephone conversation 09/08/16 between C Wall, Port Governance Branch, Department for Transport and D Clark, Harbour Master, St Mary's Harbour, Isles of Scilly

Mr Clark advised that an e-mail advising of the application for the harbour directions power under section 40A of the Harbours Act 1964 was sent to members of the Harbour Users Group.

Additionally, a notice was placed on the St Mary's Harbour Website and in the Port Reception, and news of the application featured on St Mary's weekly round-up slots on Radio Cornwall and Radio Scilly, and Twitter.

Powers of General Direction - St Marys Harbour

Obtaining Powers of General Direction will to be used for the enhanced safe management of St Marys Harbour and has been discussed by the Harbour Executive Committee including the last one Held on 22nd October 2015 at Restormel Estate Office, Lostwithiel .It has been fully discussed and consulted on in the submission of the purposed harbour revision order (sees section 30 of which below).The application is in order to get a more flexible basis for regulating navigation in the harbour and to be able to deal with situations that may arise and not be covered under other statutory powers including Byelaws. Powers of General Direction are provided for in The Harbours Act 1964, as amended by the Marine Navigation Act 2013. This power may be sought as a response to the review of powers recommended by the Port Marine Safety Code (PMSC.)

As Designated Person, I am aware that the St Marys Harbour Authority has reviewed its powers as recommended and whilst an update of byelaws may take a longer period of time the application for Powers of general direction can be obtained either in the HRO or by separate application. Given the further considerations being made on the proposed HRO, I highly recommend the separate application for the powers and on granting for section 30 to be removed from the HRO application.(below)

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

30.—(1) The Commissioners may, in accordance with the requirements of article 31, 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 in relation to the matters referred to in sub- paragraphs (a), (b), (c) and (d).

(3) The Commissioners may revoke a direction given under paragraph (1).

General directions – power to issue directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship;

It will be necessary for there to be “Passing a board resolution “confirming that your Port or Harbour will have regard to and comply with the code of conduct on harbour directions (this includes a requirement for a Port User Group, having regard to supplementary guidance issued from time to time and applying the dispute resolution procedure set out in the code). The resolution also needs to

authorise a suitable person to apply to the Secretary of State for Transport for your Port or Harbour to be designated with powers of harbour direction. This would be covered by the HEXCO minutes.

Harbour Directions Code of Conduct "Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers)."

In the Code it states:-

"Any Harbour Authority using Harbour Direction powers under the Act should set up a PUG; this must include representatives of harbour users as extensively as possible, including NDP members as appropriate, but in a way which keeps the PUG to a manageable size. In many cases such a user group already exists, in which case, it would be appropriate for that group to take on the duties of a PUG bearing in mind its role as set out in this Code.

A PUG should be able to (1) appoint its Chairman and secretariat from amongst its members; (2) adopt its own rules of procedure; (3) agree its own agenda for meetings; and (4) determine the frequency of its meetings. The Harbour Authority should provide a venue for meetings of the PUG and be represented at its meetings but the Harbour Authority should not be a member of the PUG.

Although the representatives on the PUG would have a remit from those they represent and a responsibility to protect their interests, members of the PUG also have a responsibility to understand and protect the overall interests of the harbour.

PUGs will have an opportunity to consider proposed Harbour Directions at least 14 days before the formal 28 day consultation period. PUGs will play a particularly important role in the event of unresolved objections. They will have a responsibility to seek to achieve resolution at a local level whenever possible."

St Marys Harbour already has a HUG the same as the PUG highlighted in the code and a requirement to be set up before granting of an order. I am aware that the HUG established at St Marys Harbour is active and already carries out the functions highlighted and their minutes have been audited as part of the PMSC Audit carried out annually.

I fully support and encourage the application for Powers of General Direction.

Signed

A handwritten signature in cursive script, appearing to read "C. J. Luthersland", with a horizontal line underneath.

DESIGNATED PERSON 8th April 2016