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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;

Article 51(2) inserts:

“ashore” means all those parts of the harbour which are not constituted of land covered by water at the level of low water;

Article 51(2) inserts:

“the Harbour Advisory Group” means the body or bodies established in accordance with article 28 of this Order;

(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;

Article 51(2) inserts:  
“harbour operations” includes --  
(a) the marking, lighting or dredging of the harbours or any part thereof;  
(b) the berthing, mooring, storage or dry docking of a vessel;  
(c) the warehousing, sorting, weighing or handling of goods;  
(d) the movement of goods and vehicles (including parking, designated and prohibited areas, speed limits, removal from the harbours);  
(e) the towing, or moving of a vessel;  
(f) the loading or unloading of goods, or embarking or disembarking of passengers;  
(g) energy generation or storage;  
(h) the control of use of the harbours by members of the public and other third parties (including movement, conduct, authorised activities, designated and prohibited areas) but not so as to cause an interference with any public right of way;

(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.

- (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~~ ← Article 52(3)(a) omits "and".

Article 51(3)(b) substitutes:

(c) acquire land; and

Article 51(3)(c) inserts:  
(d) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.

- ~~(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/>.

### 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.

Article 51(4) substitutes articles 20, 21 and 22 (see subsequent pages)

## 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.

**Power to make general directions as to use of the harbours, etc.**

**21.**—(1) The Council may, in accordance with the requirements of article 22, give a direction for—

- (a) the ease, convenience or safety of navigation;
- (b) the safety of persons;
- (c) the protection of property, flora or fauna; or
- (d) the ease, convenience or safety of harbour operations ashore;

within the harbour.

(2) A direction under this article may apply—

- (a) to all vessels or to a class of vessels;
- (b) to all vehicles or to a class of vehicle;
- (c) to persons designated in the direction;
- (d) to the whole of the harbour or to a part; or
- (e) 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), (d) and (e).

(3) The Council may amend or revoke a direction given under paragraph (1).

(4) The Council must keep and make available for inspection at the harbour office and on its harbour website a public register of all in force general directions<sup>(1)</sup>.

**Procedure for giving, amending or revoking general directions**

**22.**—(1) Subject to paragraph (7), if the Council proposes to give, amend or revoke a general direction, it must—

- (a) give notice in writing of the proposal and a plan of the area over which the proposal applies to the “designated consultees” them being—
  - (i) the Chamber of Shipping,
  - (ii) the Royal Yachting Association,
  - (iii) the Harbour Advisory Group, and
  - (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 harbour website and in prominent locations at the harbour on the same date as the notice given in accordance with sub-paragraph (a) and keep that notice 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

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(1) The public register of all in force directions may be inspected during office hours at the harbour office located at Weymouth Harbour Office, 13 Custom House Quay, Weymouth, Dorset DT4 8BG or at [www.weymouth-harbour.co.uk](http://www.weymouth-harbour.co.uk).

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 made representations against the proposal have 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 person that 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 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, if—
  - (i) the intended activity or operation is expected to commence within 16 weeks of the Council having been notified or otherwise becoming aware of the intended activity of operation,
  - (ii) the intended activity or operation is to last less than 28 days, and
  - (iii) the Council considers that the giving or amending of a general direction in relation to the intended 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 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,
  - (ii) in paragraph (1)(c), for “sub-paragraphs (a) and (b)” substitute “paragraph (8)(a)”, and
  - (iii) 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 practicable on one occasion in a newspaper circulating in the area of the harbour and electronically on the harbour website for the period of 28 days from the date of publication of the notice in the newspaper.

(2) The notice must state a place at which copies of the general direction may be inspected.

(3) In the case of general directions applying on harbour premises notices of the general direction should be displayed 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.

\*\* Article 51(5) substitutes:

34. -(1) The Council may provide, place, lay down, maintain, retain, renew, use, have and remove moorings within the harbour-
- (a) on land owned or leased by it or in which it holds an interest; or
  - (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour.

### 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

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- ~~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

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.

Article 51(6) omits "or body".

(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—

**\*\* Article 51(7) substitutes:**

(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, 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.

- (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 —