

202[] No. 0000

HARBOURS, DOCKS, PIERS AND FERRIES

The Lynmouth Harbour Empowerment Order 202[]

<i>Made</i>	- - - -	202[]
<i>Laid before Parliament</i>		202[]
<i>Coming into force</i>		202[]

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North Devon Council has applied for a harbour empowerment order in accordance with section 16(1) and 16(2) of the Harbours Acts 1964(a) (“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(b) made under section 42A of the Act(c) delegated the functions of the appropriate Minister under section 14(d) to the Marine Management Organisation(e).

The Marine Management Organisation, being satisfied as mentioned in section 16(5) and in exercise of the powers conferred by section 16(1), (2) and (6) of the Act, makes the following Order.

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Lynmouth Harbour Empowerment Order 202[X] and shall come into force on [DATE].

(2) This Order extends to England and Wales.

Interpretation

2.—(1) In this Order

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(f);

“the Act of 1964” means the Harbours Act 1964(g);

“the Act of 1966” means the Docks and Harbours Act 1966(h);

(a) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 4(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 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).

(b) S.I. 2010/674.

(c) 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).

(d) For the definition of “the Minister”, see section 57(1) of the Harbours Act 1964 (c. 40).

(e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23). The head office address of the Marine Management Organisation is located at Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH.

(f) 1847 c. 27.

(g) 1964 c. 40.

(h) 1966 c. 28; section 37(3) was repealed by the Transport and Works Act 1992 (c. 42), Schedule 4 (Part II).

“the Act of 1995” means the Merchant Shipping Act 1995(a);

“aids to navigation” includes lights, buoys, beacons and signals including sound and electronic signals and any structure required to house the same;

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

“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” includes recharging or emptying (in whole or part) a vessel with fuel in exchange for financial payment or other valuable consideration;

“the Council” means North Devon Council;

“electronic communications network” has the meanings given by section 32 to the Communications Act 2003(b) (meaning of electronics communications networks and services);

“functions” means the powers and duties at and in connection with the harbour authorised by this Order;

“general direction” means a direction given under article 20 (power to make general directions as to the use of harbour, etc.);

“harbour” means Lynmouth Harbour the limits of which include the harbour premises and are defined in article 4 (harbour jurisdiction);

“the Harbour Advisory Group” means the body or bodies established in accordance with article 31 (advisory bodies);

“harbour facilities” includes, but is not limited to, shipping, fisheries, marine, energy, recreational, leisure, tourism and retail facilities (including buildings);

“the harbour limits plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Lynmouth harbour limits plan referred to in the Lynmouth Harbour Empowerment Order 202[]”, one copy of which is deposited at the office of the Marine Management Organisation(c) and the other at the main office(d) of the Council;

“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;

“harbour operations” includes—

- (a) the marking, lighting or dredging of the harbour or any part thereof;
- (b) the berthing, mooring, dry docking or storage of a vessel;
- (c) the laying and maintenance of moorings or other similar apparatus in the harbour;
- (d) the warehousing, sorting, weighing or handling of goods;
- (e) the movement of goods and vehicles (including parking, designated and prohibited areas, speed limits, removal from the harbour);
- (f) the towing, or moving of a vessel;
- (g) the loading or unloading of goods, or embarking or disembarking of passengers;
- (h) energy generation or storage;

(a) 1995 c. 21.

(b) 2003 c. 21.

(c) The Marine Management Organisation, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

(d) North Devon Council, Lynton House, Commercial Road, Barnstaple, EX31 1DG.

- (i) the control of use of the harbour 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;

“harbour premises” means land adjacent to the wet harbour areas 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, car parks, other buildings and all other works and conveniences, land and premises which at the date of this Order includes the land shaded yellow on the harbour premises plan;

“harbour premises plan” means the plan prepared in duplicate, signed on behalf of the Marine Management Organisation and marked “Signed Lynmouth harbour premises plan referred to in the Lynmouth Harbour Empowerment Order 202[]”, one copy of which is deposited at the office of the Marine Management Organisation and the other at the main 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;

“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;

“land” includes land covered by water;

“the level of high water” means the level of mean high water spring tides;

“the level of low water” means the level of mean low water spring tides;

“master” in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

“operator” has the meaning given by paragraph 2 of Schedule 3A to the Communications Act 2003 (the electronic communications code);

“special direction” means a direction given under article 23 (special directions);

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990^(a);
- (b) a coast protection Council within the meaning of section 1 of the Coast Protection Act 1949^(b) (coast protection authorities);
- (c) any operator of an electronic communications network;

“subsidiary” has the meaning given by section 1159(1) of the Companies Act 2006^(c);

“Trinity House” means the Corporation of Trinity House of Deptford Strond^(d);

“vehicle” includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans, bicycles, and mobile homes and includes a hovercraft or any other amphibious vehicle;

“vessel” includes a ship^(e), boat, houseboat, raft or craft of any description, however propelled or moved, and includes non-displacement craft, watercraft, a hydrofoil vessel, or any other amphibious vehicle and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily);

“watercraft” means any type of craft which—

(a) 1990 c. 8.
(b) 1949 c. 74, section 1 was amended by the Local Government Act 1972 (c. 70), Schedule 30.
(c) 2006 c. 46.
(d) The Corporation of Trinity House, Tower Hill, London, EC3N 4DH.
(e) As defined in section 57 (Interpretation) of the Harbours Act 1964 (c. 40).

- (a) is capable of moving under its own mechanical power;
- (b) is used, navigated or situated wholly or partially in or on water; and
- (c) is capable of being used to carry one or more persons,

but does not include a ship or fishing vessel within the meanings given in section 313(1) of the Act of 1995;

“wet harbour areas” means those parts of the harbour which are covered by water at the level of low water.

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words “or thereabouts” were inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

(3) In this Order longitude and latitude are stated by reference to the World Geodetic System (WGS84), revised in 1984 and further revised in 2004.

Incorporation of provisions of Harbours, Docks and Piers Clauses Act 1847

3.—(1) The Act of 1847 (except sections 6 to 20, 22 to 26, 28 to 32, 41, 42, 49, 50, 66, 67, 70, 71, 77, 78, 84 to 90 and 97 to 102), (so far as applicable to the purposes and not inconsistent with the provisions of this Order), is incorporated with this Order subject to the modifications stated in paragraphs (2) to (5) below.

(2) Section 63 of the Act of 1847 (penalty on vessels lying near the entrance of harbour or dock without permission) shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(3) Section 69 of the Act of 1847 (combustible matter on quays, &c., to be removed) shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) Section 74 of the Act of 1847 (owner of vessel answerable for damage to works) of the Act of 1847 shall have effect subject to the modification that the words “provided always” to the end of the section are omitted.

(5) In construing the provisions of the Act of 1847 as incorporated with this Order—

- (a) the expression “the special Act” means this Order;
- (b) the expression “the undertakers” means the Council;
- (c) the expression “the harbour, dock, or pier” shall mean the port, and includes those docks, piers, berths, quays, landing places and wharves forming part of the port premises;
- (d) for the definition of the word “vessel” in section 3 of the Act of 1847 (interpretation) there shall be substituted the definition of that word in article 2(1) of this Order;
- (e) the reference in section 53 of the Act of 1847 (penalty on shipmasters not complying with directions of the harbour master) 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 and may include the communication of the notice orally or otherwise.

PART 2

HARBOUR JURISDICTION AND GENERAL FUNCTIONS

Harbour Jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Act of 1964 (interpretation), and the powers of the harbour master shall be exercisable within the harbour, the limits of which shall be—

- (a) the area enclosed within an imaginary line commencing at a point (51°13'56.59"N 03°49'41.4"W) and then following the line of the level of high water along Blacklands Beach in an westerly direction to a point (51°13'55.0"N 03°49'50.5"W) on the eastern side of the mouth of the River Lynn and then following the level of high water along the eastern bank for the River Lynn to a point (51°13'51.0"N 03°49'49.8"W) on the seaward side of the West Lyn Bridge and then in a straight line in a south westerly direction to a point (51°13'50.7"N 03°49'50.6"W) on the seaward side of the West Lyn Bridge on the western bank of the River Lynn and then following the line of the level of high water around The Arm and the inner harbour to a point (51°13'55.4"N 03°49'47.3"W) on the western side of the mouth of the River Lynn and then following the line of the level of high water in a westerly direction along Blacklands Beach to a point (51°13'54.59"N 03°49'53.4"W) and then in a straight line in a northerly direction to a point (51°14'7.46"N 03°49'53.4"W) and then in a straight line in an easterly direction to a point (51°14'7.46"N 03°49'41.4"W) and then in a straight line in a southerly direction back to the point of commencement at (51°13'56.59"N 03°49'41.4"W), shown for illustrative purposes shaded blue on the harbour limits plan; and
- (b) the extent of the harbour premises not within the area described in paragraph (a)

(2) In the event of any discrepancy between the descriptions of the boundaries of the harbour referred to in paragraph (1) and the boundaries shown on the harbour limits plan and the harbour premises plan, the descriptions in question shall prevail over said plans.

(3) The harbour premises shall be deemed to be operational land within the meaning and for the purposes of the Town and Country Planning Act 1990(a).

(4) The Council must keep, and make available for inspection at its main office and on its website(b) from the day on which this Order comes into force, an illustrative plan.

(5) The Council must update the illustrative plan to reflect any alterations to the extent of the harbour premises within the period of 30 days beginning with the day on which the alterations are made.

(6) In this article “illustrative plan” means a plan showing, for illustrative purposes only, the harbour limits as described in paragraph (1) of this article.

(7) For and incidental to the performance of its functions under this Order, the Council may employ and appoint harbour masters.

(8) 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 Act of 1995.

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 provided within or in connection with the

(a) 1990 c. 8; “operational land” is defined in section 263, which section is subject to section 264.

(b) <https://www.northdevon.gov.uk/business/ilfracombe-harbour/>.

harbour, and for the conservation of the harbour' flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without limiting the scope of 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 in accordance with sub-paragraph (i)),
- (c) acquire land;
- (d) invest any sums not immediately required for the purposes of the harbour undertaking and turn its resources to account so far as not required for those purposes;
- (e) do all other things which in its opinion are expedient to facilitate the operation, improvement or development of the harbour undertaking.

(3) The Council must, from time to time, formulate, publish and review a business plan or business plans (“Harbour Business Plan”)(a) in relation to its maintenance, conservation, operation, management and improvement of the harbour undertaking, which it must have regard to when performing its functions.

(4) In the exercise of the powers of sub-paragraph (2)(b), 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 obstructs or impedes 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 limitation of the powers of the Council under or by virtue of any other enactment.

PART 3

FINANCES

Application of finances

6.—(1) The Council must apply the harbour revenue in the manner following and not otherwise—

- (a) first in payment of the working and establishment expenses and cost of maintenance of the harbour;
- (b) secondly in payment of the interest on any moneys borrowed by the Council for the harbour under any statutory borrowing power;
- (c) thirdly in payment of all other expenses properly chargeable to harbour revenue;
- (d) fourthly to a reserve fund established under article 7 (reserve fund).

Reserve fund

7.—(1) The Council may establish and maintain a reserve fund.

(a) The Harbour Business Plan may be inspected during workings hours at the main office of the Council (North Devon Council, Lynton House, Commercial Road, Barnstaple, EX31 1DG.) and via its website at www.northdevon.gov.uk/business/ilfracombe-harbour/lynmouth-harbour/.

(2) The Council may carry to a reserve fund such part of the harbour revenue as may be available for the purpose in accordance with article 6(1)(d).

(3) Any reserve fund established or maintained under this article may from time to time be applied by the Council in its discretion—

- (a) in or towards meeting any deficiency on harbour revenue account in any year;
- (b) to meet any extraordinary claim or demand in respect of the harbour undertaking;
- (c) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the harbour undertaking or any vessels, plant or equipment of the Council connected to the harbour undertaking;
- (d) for improving the operational area and the navigation of the harbour and the approaches to the harbour;
- (e) for any other lawful purpose sanctioned by the Council and connected with the harbour undertaking.

Borrowing

8.—(1) The Council, including any subsidiary of the Council, may from time to time borrow, by any methods it sees fit, such sums of money as it thinks necessary for the purposes of the harbour undertaking.

(2) A sum of money borrowed under paragraph (1) by the Council, or any subsidiary of the Council, may be borrowed upon the security of some or all of—

- (a) its assets for the time being;
- (b) its revenues;
- (c) a combination of its assets and revenues,

in whatever way it thinks fit.

(3) The Council, or a subsidiary of the Council, may effect such arrangements as it thinks fit to mitigate against any financial risk incurred for the purposes mentioned in paragraph (1).

Temporary borrowing

9. The Council may borrow temporarily, by way of overdraft or otherwise, such sums of money as the Council may require for the purposes of the harbour undertaking.

PART 4

CHARGES

Charges other than ship, passenger and goods dues

10. The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig, or floating platform or any other vessel, not being a ship as defined by section 57(1) of the Act of 1964, entering, using, within or leaving the harbour such reasonable charges as it may determine, and sections 30 (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges) and 31 (right of objection to ship, passenger and goods dues) of the Act of 1964 shall with all necessary modification apply to the charges authorised by this article as they may apply to ship, passenger and goods dues demanded under section 26 of the Act of 1964 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them).

Charges for services or facilities

11. In addition to article 10 (charges other than ship, passenger and goods dues) and its power to demand ship, passenger and goods dues under section 26 of the Act of 1964 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them), the Council may demand, take and recover such reasonable charges for services and facilities provided by the Council at the harbour or in connection with the harbour undertaking as it may from time to time determine.

Payment of charges

12.—(1) The charges which the Council is for the time being authorised to demand, take and recover in respect of vessels and goods or otherwise under any enactment—

- (a) are payable before the removal from the harbour of any vessel or goods in respect of which they are payable;
- (b) may be demanded, taken and recovered—
 - (i) by such persons,
 - (ii) at such places,
 - (iii) at such times,
 - (iv) under such terms and conditions,

as the Council may from time to time specify in its published list of charges.

(2) Charges payable to the Council in respect of—

- (a) a vessel, shall be payable by the owner or master;
- (b) goods, shall be payable by the owner, consignee or shipper of the goods.

(3) Where charges payable to the Council may be recovered by it from more than one person, the persons from whom they may be recovered shall be jointly and severally liable.

(4) Without limitation to the scope of paragraph (1), the terms and conditions as to the payment of charges which the Council may from time to time specify may include the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

(5) Where charges payable to the Council have not been paid by the time they fall due for payment, the Council may detain within or refuse entry to, or require removal from the harbour of—

- (a) the vessel or goods to which the charges relate; and
- (b) any other vessels or goods that the owner or master of the vessel or goods to which the charges relate is also the owner or master of,

until such charges have been paid in full.

Compounding arrangements and rebates

13.—(1) The Council may confer total or partial exemptions from, or allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption, rebate or composition.

(2) Nothing in section 30 of the Act of 1964 (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges) shall require the Council to include in the list of ship, passenger and goods dues, as required by subsection (1) of that section, ship, passenger and goods dues—

- (a) reduced by a total or partial exemption;
- (b) subject to a compounding arrangement or rebate.

Deposit for charges

14.—(1) The Council may, if it thinks fit, require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge.

(2) Where such a person fails to deposit or guarantee the sum of money required, the Council may detain in the harbour the vessel or goods in respect to which the charge relates, or refuse entry to, or require removal from the harbour in respect of the vessel or goods, until the requirement has been complied with or the charge paid.

Liens for charges

15.—(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect thereof.

(2) A wharfinger or carrier who is not themselves liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in their custody, and in that event they shall have a like lien on the goods for the amount of those charges as they would have in respect of their charges for safe custody or carriage of the goods, as the case may be.

Refusal to pay charges for a landing place

16. The harbour master may prevent a vessel from entering the harbour or using a landing place, mooring or other facility provided by the Council, if the master of the vessel refuses to pay the charges for such use.

Exemptions from harbour dues

17.—(1) Except insofar as may be agreed between the Council and the government department or person concerned the Council shall not be entitled to demand harbour dues from, or in respect of—

- (a) a vessel—
 - (i) in the service of HM Revenue and Customs or the Secretary of State for Defence in the execution of their core duties and not carrying persons or goods for reward,
 - (ii) belonging to or used by a lifeboat service whilst employed in or in connection with the core functions of that service,
 - (iii) in the service of a police force or other emergency service in the execution of their core duties and not carrying persons or goods for reward,
- (b) HM Revenue and Customs or any officer or other person employed in their service in execution of their core duties in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, HM Revenue and Customs;
- (c) an officer of HM Revenue and Customs or any other person employed in their service while in the execution of their core duties;
- (d) a person employed by the Secretary of State for Defence while in the execution of their core duties;
- (e) Officers of the Department for Transport in the execution of their core duties.

(2) In this article “harbour dues” means ship, passenger and goods dues which the Council may demand under section 26 of the Act of 1964 (repeal of provisions limiting discretion of certain harbour authorities as to ship, passenger and goods dues charged by them).

Recovery of charges

18.—(1) In addition to any other remedy given by this Order and by the Act of 1847 as incorporated with this Order, the Council may recover any charges payable to it as a debt in any court of competent jurisdiction.

(2) 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, paragraph (1) applies whether or not the Council's collector has gone on board the vessel and demanded the charge under section 44 of the Act of 1847 (recovery of tonnage rates by distraint of ship and tackle).

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 of the vessel;
- (c) goods carried on or imported or exported on the vessel.

PART 5

GENERAL DIRECTIONS, SPECIAL DIRECTIONS AND BYELAWS

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

20.—(1) The Council may, in accordance with the requirements of article 21 (procedure for giving, amending or revoking general directions), 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;
- (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;
- (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 main office of the Council and on its website a public register of all in force general directions^(a).

(a) The public register of all in force directions may be inspected during office hours at the main office of the Council at North Devon Council, Lynton House, Commercial Road, Barnstaple, EX31 1DG and <https://www.northdevon.gov.uk/business/ilfracombe-harbour/lynmouth-harbour/>.

Procedure for giving, amending or revoking general directions

21.—(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 Council’s 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 beginning with 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 from 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 any 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 or 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 or 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 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,

(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

22.—(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 area of the harbour and electronically on the Council's 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) 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.

Special Directions

23.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the harbour for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel;
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises;
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (e) prohibiting, extinguishing, or restricting the use of fires or lights;
- (f) regulating the use of ballast;
- (g) requiring the removal of the vessel from any part of the harbour if the vessel—
 - (i) is on fire,
 - (ii) is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property,
 - (iii) is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons or the dispatch of business in the harbour,
 - (iv) needs to be removed to enable maintenance or repair work to be carried out to the harbour,
- (h) requiring the vessel to be removed to a place outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction relating to a vessel must specify a particular person or persons to whom the direction is addressed, either by name or by a description sufficient to enable the person or persons in question to be identified.

(3) A special direction may be given in any manner considered by the harbour master to be appropriate.

(4) The harbour master may amend or revoke a special direction.

Failure to comply with directions

24.—(1) A person who fails to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) it shall be a defence for the person charged to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Enforcement of directions

25.—(1) Without limitation to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the harbour master may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with, provided that the powers of this paragraph must not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found;

(b) in relation to a lighter unless it is obstructing or interfering with navigation.

(3) Expenses incurred by the Council in the exercise of the powers conferred by paragraph (1) shall be recoverable by the Council as if it were a charge of the Council in respect of the vessel.

Master's responsibility in relation to directions

26. The giving of a general direction or special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to the vessel, to persons on board the vessel, to the cargo or any other person or property.

Boarding of vessels and vehicles

27. A duly authorised officer of the Council may, on producing their authority if so required, enter and inspect a vessel or vehicle in the harbour for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw or general direction of the Council relating to the harbour, including the enforcement of any such enactment, byelaw or general direction.

Power to make byelaws

28.—(1) The Council may make such byelaws as it thinks fit for the efficient management and regulation of the harbour.

(2) Without limitation to the scope of 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 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;
- (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 that—

- (a) they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
- (b) they had a reasonable excuse for their act or failure to act;
- (c) 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 powers in the article are in addition to the powers conferred by section 83 of the Act of 1847 (byelaws may be made for all or any of the purposes herein named).

Confirmation of byelaws

29.—(1) 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^(a) shall apply

(a) 1972 c. 70.

to all byelaws made after the coming into force of this Order, by the Council under this Order or section 83 of the Act of 1847 (byelaws may be made for all or any of the purposes herein named).

(2) In its application to byelaws made under this Order or section 83 of the Act of 1847 (byelaws may be made for all or any of the purposes herein named), section 236 (procedure etc. for byelaws) shall have effect, subject to paragraph (3), as if after the word “confirm” in subsection 236(7) in the first place where that word occurs there were inserted the words “with or without modification”.

(3) Where the confirming Authority proposes to make a modification which appears to the confirming Authority to be substantial, then—

- (a) the confirming Authority must inform the Council and require it to take any steps the confirming Authority thinks necessary for informing persons likely to be concerned with that modification;
- (b) the confirming Authority must not confirm the byelaws until there has elapsed such period as the confirming Authority thinks reasonable for the Council and other persons who have been informed of the proposed modifications to consider and comment on it.

(4) The confirming Authority for the purposes of this article and of section 236 (procedure etc. for byelaws) in its application to byelaws made under this Order or section 83 of the Act of 1847 (byelaws may be made for all or any of the purposes herein names) shall be the Secretary of State.

Saving for existing directions, byelaws etc.

30. Any general direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Council in relation to the harbour undertaking and in force on or immediately before or on the date on which this Order comes into force shall, notwithstanding the repeals and revocations set out in article 58 (revocation / repeal) and Schedule 2 (revocation / repeal), continue to have effect.

PART 6

MISCELLANEOUS AND GENERAL

Advisory bodies

31.—(1) The Council must establish one or more advisory bodies which the Council must (except in an emergency) consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour and their navigation.

(2) The Council must make arrangements for every such advisory body to meet not less than twice a year.

(3) The Council must take into consideration within a reasonable period any matter, recommendation or representation which may from time to time be referred or made to it by such an advisory body whether or not that advisory body has been consulted by the Council on the matter, recommendation or representation so referred or made.

(4) Any advisory body established under this article must consist of such number or numbers of persons appointed by the Council as the Council from time to time considers appropriate.

(5) Appointments to any such advisory body must be made by the Council in accordance with a scheme prepared by it for that purpose and the scheme must provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in the functioning of the harbour.

(6) Any such advisory body may determine its own quorum and procedure and must appoint a chair.

(7) An individual member of any such advisory body may hold office for the period of three years from the date of their appointment and at the end of that period shall be eligible for reappointment.

(8) A member of any such advisory body may resign their office at any time by notice in writing given to the Council.

Development of land etc.

32.—(1) The Council may, subject to obtaining the necessary rights in or over land—

- (a) use or develop for any purpose, and deal with, any land within or in the vicinity of the harbour;
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a company for using or developing for any purpose, and dealing with, any land within or in the vicinity of the harbour,

provided that it is conducive to the improvement, maintenance or management of the harbour in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the company referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

Powers to grant tenancies and to dispose of land

33.—(1) The Council may, for the purposes of or in connection with the carrying on of the harbour undertaking, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbour for such period, at such rents and other considerations and on such terms and conditions as it thinks fit.

(2) A lease or grant made or given under paragraph (1) may include provisions delegating to the lessee or grantee any of the functions of the Council other than—

- (a) a duty imposed on the authority by or under any enactment;
- (b) the making of byelaws;
- (c) the levying of ship, passenger and goods dues;
- (d) the appointment of harbour, dock and pier masters;
- (e) the nomination of persons to act as constables;
- (f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation.

(3) The Council may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery, equipment or other property vested in it if it considers that—

- (a) the property is surplus to that which is required for the purpose of the harbour; or
- (b) it would conduce to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner for the property to be held by a person other than the Council,

for such consideration and on such terms and conditions as it thinks fit.

Power to appropriate lands and works for particular uses, etc.

34.—(1) Notwithstanding anything in any statutory provision of local application the Council may from time to time for the purpose of or in connection with the carrying on of the harbour undertaking set apart and appropriate any part of the harbour for the time being vested in, or occupied or administered by the Council as part of the harbour undertaking for the exclusive, partial or preferential use and accommodation of any particular trade, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall make any use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Council and—

- (a) the harbour master, or as the case may be, such officer, may order any person or vessel making use of the harbour without such consent to leave or be removed; and
- (b) the provisions of section 58 of the Act of 1847 (harbour master may remove vessels within docks, &c.) shall extend and apply with the necessary modifications to and in relation to such vessels.

Other commercial activities

35.—(1) The Council may, in addition to any other powers conferred on the Council—

- (a) carry on at any place a trade or business of any kind including a trade or business carried on in conjunction with another person;
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a company, for carrying on any part of the harbour undertaking or carrying on at any place a trade or business of any kind,

provided that it is conducive to the improvement, maintenance, operation or management of the harbour in an efficient and economical manner.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of a company referred to in paragraph (1)(b) may include powers to do anything necessary or expedient for the purposes of the objects mentioned in that paragraph or for purposes incidental to those purposes, notwithstanding that the Council would not itself have the power to do that thing.

(3) The powers of the Council under this article are additional to the powers of the Council under section 37 of the Act of 1966 (powers of harbour authorities to acquire a harbour business or shares in a harbour business).

Power to delegate functions

36. 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 35(1)(b), except—

- (a) a duty imposed on the authority by or under any enactment;
- (b) the making of byelaws;
- (c) the levying of ship, passenger and goods dues;
- (d) the appointment of harbour, dock and pier masters;
- (e) the nomination of persons to act as constables;
- (f) functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation.

Power to lay moorings

37.—(1) The Council may provide, place, lay down, maintain, retain, renew, use or remove such moorings in the harbour as it considers necessary or desirable for the convenience of vessels—

- (a) on land owned or leased by it; and
- (b) with the consent in writing of the owner and any lessee thereof, on any other land in the harbour..

(2) The Council may make reasonable charges in respect of any vessel using any moorings provided under this article.

(3) In this article and articles 38 (licensing of moorings) and 39 (offences as to moorings etc.), “mooring” includes any buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience used or capable of being used for the mooring of vessels.

Licensing of moorings

38.—(1) The Council may from time to time grant a licence to any person to place, lay down, maintain, retain, renew and use moorings for vessels in the harbour.

(2) A licence—

- (a) may be granted for such a period and on such terms and conditions as the Council thinks fit;
- (b) may relate to one mooring, or to several moorings.

(3) The Council may make reasonable charges for the grant of a licence under this article.

Offences as to moorings etc.

39.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Council in setting out moorings in the harbour;
- (b) intentionally and without lawful authority pulls up or removes any mooring or any part of any mooring in the harbour;
- (c) places, lays down, maintains, renews or has in the harbour any mooring not provided under article 37 (power to lay moorings) or licensed under article 38 (licensing of moorings);
- (d) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Council or at a quay, jetty or other work provided for the mooring of vessels;
- (e) without reasonable excuse causes or permits a vessel to be moored at a mooring provided under article 37 (power to lay moorings) or licensed under article 38 (licensing of moorings) which the person concerned is not entitled to use;

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) If any person commits an offence under paragraph (1)(c) the Council may remove the mooring in question and recover from that person the expenses incurred in doing so as a debt.

(3) Subject to paragraph (6), if any person commits an offence under paragraph (1)(d) or (1)(e) the Council may—

- (a) remove the vessel, including any tackle with the vessel;
- (b) sell or otherwise dispose of the vessel and tackle; and
- (c) recover out of the proceeds of sale—
 - (i) any unpaid charge payable under article 37 (power to lay moorings);
 - (ii) any unpaid licence fee payable under article 38 (licensing of moorings), and
 - (iii) the expenses of removal and disposal under this paragraph.

(4) If the proceeds of sale under paragraph (3)(b) are sufficient to allow the Council to recover all amounts permitted by paragraph (3)(c), the Council shall hold any surplus proceeds of sale on trust for the owner.

(5) If the proceeds of sale under paragraph (3)(b) are insufficient to allow the Council to recover all amounts permitted by paragraph (3)(c), or there is no sale of the vessel, the Council may recover the amounts referred to in paragraph (3)(c) net of any proceeds of sale from the owner as a debt.

(6) The Council must not exercise its power to remove a vessel under paragraph (3) unless—

- (a) it has given to the owner seven clear days' notice in writing of its intention to do so; or
- (b) it is an emergency.

(7) Where paragraph (6)(b) applies, the Council must notify the owner that it has removed the vessel as soon as reasonably practicable afterwards.

Bunkering

40.—(1) The Council may from time to time grant to a person with or without conditions a licence to carry out commercial refuelling activities related to vessels in the harbour.

(2) Nothing in any licence granted under paragraph (1) shall entitle a person to carry out commercial refuelling activities from or on land not owned or leased by that person or by the Council or in which that person has no interest.

(3) Any licence granted under paragraph (1) shall be valid only for a period of one year commencing with the date on which it is granted.

(4) The Council may charge for a licence granted under paragraph (1) such reasonable fee as the Council may from time to time prescribe.

(5) Any person who without reasonable excuse carries out or permits a commercial refuelling activity related to a vessel in the harbour except in accordance with a licence issued by the Council under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Aids to navigation

41.—(1) In addition to its powers under section 201 of the Act of 1995 (powers of harbour authorities as local lighthouse authorities) but subject to obtaining any necessary interest in or over land, the Council may erect or place, alter, discontinue or remove aids to navigation in any place adjacent to the harbour.

(2) The Council must not exercise the powers of paragraph (1) without the approval of Trinity House.

Power to dredge

42.—(1) The Council may, as appears to it to be necessary or desirable for the purposes of the harbour undertaking, deepen, widen, dredge, scour, cleanse, alter and improve the harbour below the level of high water.

(2) Subject to paragraph (3), all materials dredged up or removed by the Council in exercise of the powers of this article shall be the property of the Council and may be used, sold, deposited or otherwise disposed of as the Council may think fit.

(3) No such materials shall be laid down or deposited in contravention of the provisions of any enactment as respects to the disposal of waste.

(4) The exemption in section 75 of the Marine and Coastal Access Act 2009 (exemption for certain dredging etc activities) shall not apply to the harbour, the limits of which are defined in article 4(1) of this Order.

Repair of landing places, etc.

43.—(1) In this article, “relevant feature” means any landing place, jetty, wall, pontoon, pile, embankment, bridge, structure, groyne or other work in the harbour or on land immediately adjoining the waters of the harbour other than one under the control or management of the Council.

(2) The Council may by notice require the owner, lessee or occupier of a relevant feature which in the opinion of the Council is, or is likely to become, by reason of its insecure condition or want of repair—

- (a) dangerous to persons or vessels using the harbour;
- (b) a hindrance to the navigation of the harbour,

to remedy its condition to the Council's reasonable satisfaction within a reasonable time, not being less than 21 days, specified in the notice.

(3) If a person to whom notice is given under this article fails without reasonable excuse to comply with the notice within the time stated in the notice or such other time as the Secretary of State on an appeal may substitute therefore—

- (a) that person shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) the Council may carry out the work required by the notice and may recover the reasonable expenses of so doing from the person on whom the notice was served.

(4) A notice under this article must have annexed to it a copy of this article.

(5) A person aggrieved by a notice served by the Council under this article may, during the period of 21 days beginning with the date on which the notice was served, appeal to the Secretary of State against the notice.

(6) An appeal under paragraph (5) must be made by notice in writing stating the grounds of the appeal.

(7) A person who appeals under paragraph (5) must give to the Council notice of the appeal accompanied by a copy of the statement of appeal; and the Council shall, within 21 days of receipt of the notice, be entitled to furnish to the Secretary of State its observations on the appeal.

(8) On an appeal under paragraph (5), the Secretary of State shall either quash the notice, modify its requirements or dismiss the appeal.

(9) In this article "owner", "lessee" and "occupier", in relation to a relevant feature, means the person who was the "owner", "lessee" or "occupier" of the relevant feature at the date the notice is served, or if the "owner", "lessee" or "occupier" of the relevant feature is not readily identifiable, the "owner", "lessee" or "occupier" of the land on which the relevant feature is situated at the date the notice is served.

Restriction of works and dredging

44.—(1) Subject to paragraph (3), no person other than the Council shall, on, under, in or over tidal waters or land below the level of high water in the harbour—

- (a) construct, alter, renew or extend any works, unless that person is licensed to do so by a works licence and except on the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved under article 46 (licensing of works);
- (b) dredge, unless that person is licenced to do so by a dredging licence and except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved under article 47 (licence to dredge).

(2) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice, the Council may carry out the works so required and may recover from that person the cost of so doing.

(3) Nothing in this article shall apply to—

- (a) any operations or works specifically authorised by any enactment;
- (b) any operations or works of a statutory undertaker;
- (c) any operations or works authorised by a moorings licence granted under article 37 (licensing of moorings).

(4) Any person who without reasonable excuse contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Control of certain operations and works of statutory undertakers

45.—(1) This article applies to any operations or works in the harbour of a statutory undertaker on, under, in or over tidal waters or land below the level of high water, not being operations or works which are specifically authorised by an enactment.

(2) Subject to paragraph (3), a statutory undertaker must not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Council and has supplied the Council with such particulars as it may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker must inform the Council of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies shall be carried out subject to any directions which may from time to time be given by the Council to the statutory undertaker, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who, without reasonable excuse, contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing of works

46.—(1) The Council may upon such terms and conditions as it thinks fit grant to any person a licence to construct, alter, renew or extend any works in the harbour on, under, in or over tidal waters or land below the level of high water, notwithstanding that the works as constructed, altered, renewed, or extended, interfere with the public right of navigation or any other public right.

(2) An application for a works licence must be made in writing to the Council and must—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates; and
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the licence and, if not, the action taken to enable the applicant to obtain such rights if the licence is granted,

and, in granting a licence, the Council may require modifications in the plans, sections and particulars so submitted.

(3) The Council may require an applicant for a works licence, on making the application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(4) As a condition of the granting of a licence, the Council may require a licensee, being an applicant to whom a licence has been granted or the applicant's successor, where works are constructed in accordance with the licence, to pay such reasonable fees in respect of the Council's administrative expenses and overheads in supervising or inspecting where necessary the construction or maintenance of the works.

(5) Where the Council refuses to grant a works licence which has been applied for it must give reasons in writing for its refusal.

(6) Where the Council grants a works licence upon terms or conditions or require any modification in the plans and particulars, it must give reasons in writing for the terms and conditions imposed or the modifications required.

(7) If within 16 weeks from the receipt of the application under paragraph (2) the Council does not grant a works licence, it shall be deemed to have refused the application.

(8) When carrying out operations pursuant to a works licence, the holder of the licence must not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker;

(b) do anything which obstructs or impedes any work relating to the inspection or repair of any such apparatus,
without the consent of the statutory undertaker concerned.

Licence to dredge

47.—(1) The Council may upon such terms and conditions as it thinks fit grant to any person a licence to dredge in any part of the harbour.

(2) An application for a dredging licence must be made in writing to the Council and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations to be carried out in the exercise of the powers granted by the licence, and in granting any such licence the Council may require modifications in the plans, sections and particulars so submitted.

(3) Paragraphs (3) to (8) of article 46 (licensing of works) shall apply in relation to a dredging licence as they apply in relation to a works licence.

(4) Any materials, other than wreck within the meaning of Part IX of the Act of 1995 (salvage and wreck), taken up or collected by means of dredging pursuant to a dredging licence—

- (a) shall be the property of the holder of the licence; and
- (b) the holder of the licence may use, sell or otherwise dispose of or remove or deposit the materials as they think fit provided that no such material shall be laid down or deposited in any place within the harbour below the level of high water except—
 - (i) in such positions as may be approved by the Council, and
 - (ii) subject to such conditions as may be imposed by the Council.

(5) If it appears to the holder of the dredging licence that the Council has unreasonably withheld or refused its approval under paragraph (4) or that any condition imposed by the Council under that paragraph is unreasonable, that person may within 28 days from the date on which the Council notified the applicant of its decision, appeal to the Secretary of State whose decision shall be binding upon the parties.

(6) Paragraphs (2) to (5) of article 48 (appeals in respect of works or dredging licences) shall apply in relation to any appeal made under paragraph (5).

Appeals in respect of works or dredging licences

48.—(1) An applicant for a works licence or a dredging licence who is aggrieved by—

- (a) a refusal of the Council to grant a licence;
- (b) any terms or conditions subject to which the licence is granted;
- (c) any modifications required by the Council in the plans, sections and particulars submitted by the applicant,

may, within 28 days from the date on which the Council notifies the applicant of its decision or the date on which the Council is, under article 46(7), deemed to have refused the application, appeal to the Secretary of State.

(2) An appeal under paragraph (1) must be made by notice in writing stating the grounds of the appeal.

(3) The appellant must send to the Council a copy of the notice of the appeal; and the Council may, within 28 days of the receipt of the notice, furnish to the Secretary of State its observations on the appeal.

(4) The Secretary of State may confirm, vary or revoke the decision appealed against and may make such consequential amendments as the Secretary of State may specify.

(5) The Secretary of State may direct the Council to give effect to the decision, and the Council must forthwith comply with any direction given.

Obstruction of works

49. Any person who intentionally obstructs any person acting under the authority of the Council in setting out the lines of, or in construction of any works authorised by any enactment, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purposes of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Parking places and related facilities

50. The Council may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with related offices, waiting rooms and other conveniences and may make reasonable charges for the use of such facilities.

Removal of vehicles and vessels

51.—(1) If a vehicle or vessel is left within the harbour without permission of the Council—

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour; or
- (b) in any part of the harbour where the parking of vehicles or leaving of vessels is prohibited by notice erected by the Council,

the Council may, at the risk of the owner, remove the vehicle or vessel or cause it to be removed.

(2) Any notice erected under paragraph 1(b) must be conspicuously posted in or close to the place to which it relates.

(3) Where the Council in exercise of the powers of this article remove a vehicle or vessel or cause it to be removed it must as soon as practicable report that fact to the police.

(4) The expenses of and incidental to the removal of a vehicle or vessel under this article shall be recoverable from any person responsible.

(5) For the purposes of paragraph (4) “person responsible” means—

- (a) the owner of the vehicle or vessel at the time when it was put in the place from which it was removed under paragraph (1);
- (b) any person by whom the vehicle or vessel was put in that place.

(6) If the Council in the exercise of the powers conferred by this article remove a vehicle to a place not readily visible from the place whence it is so removed the Council must, as soon as it is reasonably practicable to do so, send to the person for the time being registered as the keeper of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002^(a) or any other regulations having the like effect for the time being in force—

- (a) at that person’s last known address;
- (b) the person’s registered address; or
- (c) the address where the vehicle is ordinarily kept,

notice that it has exercised the powers of the article and of the place to which the vehicle has been removed.

(7) A notice stating the general effect of paragraph (1) must be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the harbour.

Power with respect to disposal of wrecks

52.—(1) In its application to the Council, section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) has effect in relation to the harbour and their

(a) S.I. 2002/2742.

approaches in relation to a vessel sunk, stranded or abandoned before, as well as after, the coming into force of this Order.

(2) Subject to paragraph (3), and to any enactment for the time being in force limiting a person's liability, the Council may recover from the owner of any vessel sunk, stranded or abandoned on or after the date of coming into force of this Order in relation to which it has exercised its powers under section 252 (powers of harbour and conservancy authorities in relation to wrecks) any expenses reasonably incurred by it under that section in relation to that vessel which are not reimbursed out of any proceeds of sale within the meaning of that section.

(3) Except in a case which is in the opinion of the Council an emergency, paragraph (2) shall not apply in relation to any vessel unless, before exercising in relation to that vessel any of the powers conferred on it by section 252 (powers of harbour and conservancy authorities in relation to wrecks), other than the power of lighting and buoying, the Council has given to the owner of the vessel not less than 48 hours' notice of its intention to do so.

(4) If before the notice expires the Council receive from the owner counter-notice in writing that the owner desires to dispose of the vessel themselves, the owner shall be at liberty to do so; and the Council must not exercise the powers in section 252 (powers of harbour and conservancy authorities in relation to wrecks) in relation to that vessel until the expiration of seven days from the receipt of the counter-notice and of any further continuous period thereafter during which the owner of the vessel proceeds with the disposal thereof with all reasonable diligence and in compliance with any directions for the prevention of interference with navigation which may be given to the owner by the Council.

(2) Notice under paragraph (3) to the owner of any vessel may be served by the Council either by delivering it to the owner or by sending it to the owner by registered post or the recorded delivery service addressed to the owner at their last known place of business or abode in the United Kingdom or, if the owner or any such place of business or abode is not known to the Council, or is not in the United Kingdom, by displaying the notice at the main office of the Council and electronically on the Council's website for the period of its duration.

(3) 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.

(4) 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.

Power to deal with unserviceable vessels

53.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 (unserviceable vessels to be altogether removed from harbour) and on the Council by section 252 of the Act of 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 unserviceable 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, any expenses incurred by it in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel or warning other persons or vessels of its presence and any expenses incurred by the harbour master under section 57 of the Act of 1847 (unserviceable vessels to be altogether removed from harbour) and must pay the surplus, if any, to the person or body entitled to that surplus.

(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 must, 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 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 main office of the Council and electronically on its website for two successive weeks.

Removal of obstructions other than vessels

54.—(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) is so marked as to be readily identifiable as the property of any person, the Council must, 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,

possession may be re-taken 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) the Council may, at such time and in such manner as it thinks fit, dispose of anything removed under paragraph (1)—

- (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 article is sold, the Council must place a notice at the main office and on the Council's 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) must 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, the whole of the expenses,

from the person who was the owner at the time when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

Notices

55.—(1) Except where this Order expressly provides otherwise, a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, must be in writing and must be served by first class post.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) Where a person on whom a notice or other document is to be served has agreed in writing that service may be 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^(a) (references to service by post) as it applies for the purposes of this article, the proper address of a person in relation to the service on them 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 served 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 served by—
 - (i) addressing it to them by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it),
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land,
- (b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited) or by handing it to a member of the crew; and
- (c) in the case of any other notice or document or a notice or document that is not capable of being served in accordance with sub-paragraph (b) it may be served by displaying it at the main office of the Council for the period of its duration.

Saving for Trinity House

56. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

Crown Rights

57.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, Council or exemption of the Crown;
- (b) authorise the Council or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—
 - (i) His Majesty in right of His Crown and under the management of the Crown Estate Commissioners, without the consent in writing of the Crown Estate Commissioners,
 - (ii) a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1)(b) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

(a) 1978 c. 30.

Revocation / Repeal

58. On the date of this Order the enactments mentioned in the first and second columns of Schedule 2 shall be revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

Tom McCormack
Chief Executive Office

Date

An authorised employee of the Marine Management Organisation

SCHEDULES

SCHEDULE 1

Article 28

PURPOSES FOR WHICH BYELAWS MAY BE MADE

- 1.** Regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places, and other works and facilities provided by the Council.
- 2.** Regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour.
- 3.** Preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property, or persons within the harbour and to any aids to navigation used in connection with the harbour.
- 4.** Regulating, preventing or licensing the conduct of all persons in vessels or otherwise in the harbour not being—
 - (a) members of a police force;
 - (b) officers or servants of the Crown;
 - (c) members of a fire brigade,whilst in the exercise of their duties as such.
- 5.** Regulating the placing, laying down, maintenance, removal and use of moorings within the harbour.
- 6.** Preventing or removing obstructions (including vessels and vehicles) or impediments within the harbour.
- 7.** Regulating the launching of vessels into the harbour and/or from the harbour.
- 8.** Regulating or prohibiting the mooring, careening, beaching or anchoring and keeping of vessels in the harbour.
- 9.** Regulating or prohibiting the use in the harbour or onboard any vessel in the harbour of fires, lights, or any other equipment, tools or appliances which the Council considers involves a risk of fire, explosion or chemical reaction and for the prevention of smoking.
- 10.** Regulating the removal of rubbish (including ballast, earth or clay or other refuse) and sewerage for vessels in the harbour.
- 11.** The prevention of the disposal of such rubbish and sewerage from vessels, in the harbour.
- 12.** Prohibiting the use of or regulating the use, movement, speed, placing, loading, unloading, driving and parking of vehicles in the harbour and the removal of vehicles from the harbour (including by the Council).
- 13.** Requiring the use of effectual silencers or other similar apparatus and the control of noise generally on vessels in the harbour.
- 14.** Regulating vessels in the harbour and their entry into and departure from the harbour and, without limitation to the generality, for prescribing rules for regulating the speed and manner of navigation or movement and the lights and signals exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour.
- 15.** Regulating the embarkation of persons on to, or their disembarkation from, vessels within the harbour.

- 16.** Regulating the holding of regattas and other public events in the harbour.
- 17.** Prescribing the lights and signals to be exhibited or made—
- (a) by vessels aground in the harbour;
 - (b) by vessels or other devices used for marking obstructions within the harbour.
- 18.** Assisting the navigation of vessels within the harbour, at the entrance to any dock or at any wharf, pier or other work.
- 19.** Preventing nuisances in the harbour.
- 20.** Prohibiting or regulating the discharge by land or sea of any material, substance or thing within the harbour or its approaches.
- 21.** Regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, breakwater, wharf, or other installation or structure of any kind within the harbour, from any vessel within the harbour or from the foreshore where such fishing interferes with the operation of the harbour or the safety of navigation in the harbour.
- 22.** Regulating or prohibiting aquaplaning, water skiing or diving or other similar activities in the harbour.
- 23.** Regulating or prohibiting bathing, and for securing the protection of bathers, within the harbour.
- 24.** Regulating or prohibiting the use of vehicles on the foreshore within the harbour.
- 25.** Regulating the use of ferries within the harbour and the conduct of boatmen, ferry men, and others plying for hire in the harbour and of persons resorting to any works constructed or operated by the Council.
- 26.** Regulating the exercise of powers vested in the harbour master.
- 27.** Regulating vessels, vehicles and persons embarking or disembarking vessels, frequenting or employed in the harbour.
- 28.** The purposes specified in section 83 of the Act of 1847 (byelaws may be made for all or any of the purposes herein named).

SCHEDULE 2

Article 58

REVOCATION / REPEAL

Table 1

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
40 & 41 Vict. I Ch. xcvi.	Pier and Harbour Orders Confirmation Act, 1877 (No. 1).	The Lynmouth Pier and Harbour Order, 1877.
50 Vict. Ch. ix.	Pier and Harbour Orders Confirmation Act, 1886.	The Lynmouth Pier Order, 1886.
54 & 55 Vict. I Ch. cxliii.	Lynmouth Harbour Act 1891	The whole Act.
62 & 63 Vict. I Ch. cxxviii.	Pier and Harbour Orders Confirmation (No. 1) Act, 1899.	The Lynmouth Pier Order 1899.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of North Devon Council, provides for the empowerment of the Council with statutory harbour powers and duties in respect of Lynmouth Harbour whilst at the same time repealing the historic legislation which currently applies nearby to the limits as defined under this Order. This Order provides for:

(1) The jurisdiction (article 4) and general functions (article 5) of the Council as the statutory harbour authority for the harbour of Lynmouth and clarifies the limits of the harbour.

(2) Powers to vest in the Council relating to finances including application (article 6), reserve fund (article 7) and borrowing powers (articles 8 and 9).

(3) A modern suite of charging powers (articles 10 to 19) including exemptions from harbour dues (article 17), recovery of charges (article 18) and prevention of sailing of vessels (article 19).

(4) Powers of general and special direction on the Council and the harbour master (defined in article 2(1)) for the regulation and management of the harbour (articles 20 to 23).

(5) This Order creates an offence of failing to comply with special or general directions, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 24). A defence of due diligence is available to a person charged under article 24(1).

(6) Provisions for the enforcement of directions (article 25) and clarifying the Master's responsibility in relation to directions (article 26)

(7) The Power for a duly authorised officer of the Council to enter and inspect a vessel or vehicle for the purposes of any enactment relating to the harbour or any byelaw or general direction, including enforcement of such (article 27).

(8) Powers to make byelaws (article 28), confirmation of byelaws (article 29) and savings for existing directions and byelaws (article 30).

(9) The establishment of an advisory body consisting of harbour stakeholders with which the Council are required to consult on material matters (article 31).

(10) Powers relating to development of land (article 32), power to grant tenancies and dispose of land (article 33), power to appropriate lands and works for particular uses, etc. (article 34), other commercial activities (article 35), and power to delegate functions (article 36).

(11) Powers relating to moorings (article 37) bunkering (article 40), aids to navigation (article 41) power to dredge (article 42), repairing of landing places (article 43).

(12) Restrictions of works and dredging (article 44) and control of certain operations of works of statutory undertakers (article 45).

(13) Powers relating to the licensing of works (article 46), dredging (article 47), appeals of such licences (article 48), and obstruction of works (article 49).

(14) Powers relating to parking places and related facilities (article 50) and the removal of vehicles and vessels from the harbour where left without permission (article 51).

(15) Powers relating to disposal of wrecks (article 52), unserviceable vessels (article 53), removal of obstructions other than vessels (article 54) and notices (article 55).

(16) Savings for Trinity House (article 56) and Crown Rights (article 57).

(17) To facilitate that above, the Order repeals and revokes the Acts and Orders set out in Schedule 2 to the Order.

An impact assessment has not been prepared for this Order as there is no, or no significant, impact predicted on businesses, charities, voluntary bodies or the public sector.

An Explanatory Memorandum together with a copy of the harbour limits plan and harbour premises plan is available alongside the instrument on the UK legislation website at www.legislation.gov.uk