
STATUTORY INSTRUMENTS

2011 No. 1347

HARBOURS, DOCKS, PIERS AND FERRIES

The Yarmouth (Isle of Wight) Harbour Revision Order 2011

<i>Made</i>	- - - -	<i>26th May 2011</i>
<i>Laid before Parliament</i>		<i>2nd June 2011</i>
<i>Coming into force</i>	- -	<i>30th June 2011</i>

The Yarmouth (Isle of Wight) Harbour Commissioners have applied in accordance with section 14(2) of the Harbours Act 1964(1) (“the Act”) for a harbour revision order under section 14 of the Act.

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(2) made under section 42A of the Act(3) delegated the functions of the appropriate Minister under section 14 of the Act(4) to the Marine Management Organisation(5).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) of the Act and in exercise of the powers conferred by section 14(1), (2A) and (3) makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. (1) This Order may be cited as the Yarmouth (Isle of Wight) Harbour Revision Order 2011 and shall come into force on 30th June 2011.

(2) The Yarmouth (Isle of Wight) Harbour Orders 1931 to 2002(6) and this Order may be cited together as the Yarmouth (Isle of Wight) Harbour Orders 1931 to 2011.

(1) 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 1); by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9; and by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56) sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(2) See S.I. 2010/674.

(3) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c. 23) section 315 and Schedule 21, paragraphs 1 and 3(1).

(4) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).

(5) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

(6) See the Yarmouth (Isle of Wight) Harbour Revision Order 2002 (S.I. 2002/311), article 1(2).

Interpretation

2. (1) In this Order—

“the 1931 Order” means the Yarmouth (Isle of Wight) Pier and Harbour Order 1931 (confirmed by the Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931)(7);

“the 2001 Order” means the Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001(8);

“aids to navigation” means any sign, light, beacon, mark, navigational buoy, tide pole or other object in or in the vicinity of the harbour provided to give warning of any obstruction or danger to navigation or for the regulation of navigation;

“buoyant personal watercraft” means any personal watercraft which by reason of its concave shape provides buoyancy for the carriage of persons;

“the Commissioners” means the Yarmouth (Isle of Wight) Harbour Commissioners;

“general direction” means any direction given or proposed to be given under article 4;

“the harbour limits” means the limits shown on the harbour map;

“the harbour” means Yarmouth (Isle of Wight) harbour as defined in article 3 and Schedule 1;

“the harbour map” means the map prepared in triplicate, signed by the Acting Chief Executive Officer of the Marine Management Organisation and marked “Yarmouth (Isle of Wight) Harbour Revision Order 2011”, of which two copies have been deposited at the office of the Marine Management Organisation and one copy has been deposited at the office of the Commissioners;

“the harbourmaster” means any person appointed as such by the Commissioners, and includes his deputies and assistants, and any other person for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of harbourmaster;

“harbour water taxi service” has the meaning given by article 2(2);

“the inner harbour” means so much of the harbour as is referred to in paragraphs 2 and 3 of Schedule 1;

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

“mooring” includes any buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience provided or used for the mooring of vessels;

“non-buoyant personal watercraft” means any personal watercraft other than a buoyant personal watercraft;

“the Outer Harbour” means so much of the harbour as is referred to in paragraph 1 of Schedule 1;

“personal watercraft” means any watercraft propelled by a jet engine or other mechanical means of propulsion and steered either—

- (a) by means of a handlebar operated linkage system (with or without a rudder at the stern); or
- (b) by the person or persons riding the craft using their body weight for the purpose; or
- (c) by a combination of the methods referred to respectively in paragraphs (a) and (b);

“special direction” means any direction given or proposed to be given under article 6;

(7) 1931 c.lxxxix.

(8) S.I. 2001/2185.

Amendment in draft HRO: "a ship, boat, houseboat, barge, yacht, raft, or water craft of any description however propelled or moved and includes non-displacement crafts, personal water crafts, jet bikes, canoes, kayaks, stand up paddle boards, WIG crafts, seaplanes, and any other thing constructed or adapted for the purposes of floating on or being submersed in water (whether permanently or temporarily), hydrofoil vessels, hovercrafts, amphibious vehicles or any other apparatus or device used or capable of being used as a means of transportation on water, floating on or being submersed in water, predominantly or otherwise".

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

~~"vessel" means a ship, boat, raft or water craft of any description and includes non-displacement craft, personal watercraft, seaplanes and any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily) and a hovercraft or any other amphibious vehicle, used or capable of being used as a means of transportation on water;~~

"the zone" means that part of the area of the Outer Harbour the boundaries of which are described in Schedule 2 and shown edged green on the harbour map.

(2) In this Order "harbour water taxi service" means a service of vessels provided for the primary purpose of carrying members of the public to, from or between locations within the harbour limits and vessels (whether moored, anchored or underway) within the harbour limits, being a service for which a fare is normally levied.

Area of the harbour, etc.

3. (1) The area within which the Commissioners shall exercise jurisdiction as a harbour authority, and within which the powers of the harbourmaster may be exercised, is the area the boundaries of which are described in Schedule 1 and shown in red on the harbour map together with so much of the harbour premises as is not situated within that area.

(2) In the event of any discrepancy—

- (a) between the description of the boundaries of the harbour referred to in paragraph (1) and set out in Schedule 1 and the boundaries shown on the harbour map; or
- (b) between the description of the boundaries of the zone described in Schedule 2 and the boundaries shown on the harbour map,

the descriptions in question shall prevail over the harbour map.

(3) In this article "the harbour premises" means the quays, piers, landing places and all other works, lands and buildings for the time being vested in, or occupied or administered by, the Commissioners as part of their harbour undertaking.

PART 2

HARBOUR REGULATION

General and special directions

General directions as to use of harbour, etc.

4. (1) Subject to paragraph (2), the Commissioners may give directions under this article in respect of the harbour for any of the purposes set out in Schedule 3.

(2) The Commissioners shall not give a direction under this article—

- (a) for any of the purposes mentioned in paragraphs 1(a) to 1(g) of Schedule 3; or
- (b) (if the direction relates in whole or in part to any navigable area of the harbour) for any of the purposes mentioned in paragraphs 3(a) or 3(j) of that Schedule

unless the direction is also required for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the harbour.

(3) A direction under this article may apply—

- (a) to all vessels or to a class of vessels designated in the direction; or

- (b) to all persons or to a class of persons designated in the direction; or
- (c) to the whole of the harbour or to a part designated in the direction; or
- (d) at all times, or at times designated in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a) to (d).

(4) The Commissioners may revoke or amend any general direction.

Procedures for making general directions and designations, etc.

5. Schedule 4 shall have effect.

Special directions as to use of harbour, etc.

amendment: "or within the approaches thereto"

6. (1) The harbourmaster may give directions under this article in respect of a vessel or (in the case of sub-paragraph (a)) a person anywhere in the harbour for any of the following purposes—

- (a) requiring persons to comply with a requirement made in or under—
 - (i) a general direction;
 - (ii) any provision of this Order; or
 - (iii) any other enactment of local application applicable to the harbour or to the Commissioners;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) requiring the removal from any part of the harbour of the vessel if—
 - (i) it is on fire;
 - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life or property;
 - (iii) it 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 carrying on of business in the harbour; or
 - (iv) its removal is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent to the harbour;
- (d) requiring the removal of the vessel to outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life or to property, or to any part of the harbour referred to in paragraph (3);
- (e) regulating the loading, discharging, storing and safeguarding of the cargo, fuel, water or stores of the vessel and the dispatch of its business at the harbour;
- (f) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (g) for limiting the speed of the vessel;
- (h) as to the use of the motive power of the vessel;
- (i) prohibiting or restricting the use of fires, lights or barbecues;
- (j) as to the discharge or use of ballast.

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

(3) A special direction may be given for the conservation of any part of the harbour which has been designated, or otherwise has been given special protection or status, under any enactment by

reason of its natural beauty, fauna, flora, or archaeological or geological or physiographical features or any other natural features.

(4) In an emergency the harbourmaster may give special directions applicable to all vessels or all vessels within a specified class of vessel for any of the purposes mentioned in paragraph (1).

(5) A special direction may be given in any manner considered by the harbourmaster to be appropriate.

(6) The harbourmaster may revoke or amend a special direction.

Failure to comply with directions

7. (1) A person who fails to comply with a general direction or 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) Where a person is charged with an offence under paragraph (1) it shall be a defence for the person to prove—

- (a) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
- (b) that the person had a reasonable excuse for the act or failure to act; or
- (c) that the offence was not caused or facilitated by any act or neglect on the part of the person or on the part of any person engaged or employed by that person and that all reasonable steps were taken to prevent the commission of the offence.

Enforcement of special directions

8. (1) Without prejudice to any other remedy available to the Commissioners, if a special direction applicable to a vessel is not complied with within a reasonable time, the harbourmaster 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 attend to a special direction, and after reasonable inquiry has been made the master cannot be found, the harbourmaster may proceed to act under paragraph (1) as if the direction had been given and not complied with.

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

Master's responsibility in relation to directions

9. The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel in respect of 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.

Harbour water taxi services

Restriction of harbour water taxi services

10. (1) No person other than the Commissioners shall in the harbour operate a harbour water taxi service, or offer a vessel for use in the operation of a harbour water taxi service, unless the person is licensed so to do by the Commissioners in pursuance of article 11, nor except upon the terms and conditions, if any, upon which the licence is granted pursuant to that article.

(2) Any person who 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 harbour water taxi services

11. (1) The Commissioners may upon such terms and conditions as they think fit grant to any person a licence to operate a harbour water taxi service (in this and the following articles referred to as “a licence”) in any part of the harbour.

- (2) The Commissioners shall not be required to issue a licence if in their reasonable opinion—
- (a) the provision of the service to which the licence application relates would give rise to the risk of congestion, or obstruction or danger to navigation; or
 - (b) a comparable service is already being provided, whether by some other person already licensed under this article or by the Commissioners, which meets the needs of potential users adequately;
 - (c) the applicant is unsuitable to hold the licence, whether on account of misconduct by the applicant or (where the applicant is not an individual) by any person in control of or concerned with the management of the applicant, or for any other sufficient reason.

Further provisions as to licences

12. (1) A licence may be granted pursuant to article 11 subject to such terms and conditions as the Commissioners think fit including (without prejudice to the generality of the foregoing)—

- (a) conditions as to the hours of operation of the harbour water taxi service (including requirements as regards frequency of service);
- (b) conditions as to the fares levied by the licensed operator of the harbour water taxi service;
- (c) conditions requiring the maintenance of an insurance policy in relation to the vessels used for the purposes of the harbour water taxi service; and
- (d) conditions for ensuring compliance with requirements made by or under any enactment relating to the harbour water taxi service or to the Commissioners, or to the harbour.

(2) A licence shall have effect for such period (which shall be specified in the licence) as the Commissioners may determine.

(3) An application for a licence—

- (a) shall be made in writing to the Commissioners;
- (b) shall include proposals for the hours of operation and the fares to be levied; and
- (c) shall contain such information (including information about the applicant and the vessels to be used), and shall be accompanied by such documents, as the Commissioners shall reasonably require.

(4) The Commissioners shall give notice to the applicant of their decision whether to grant a licence.

(5) If within three months from the date of the making of an application under paragraph (3) the Commissioners do not give notice under paragraph (4), they shall be deemed to have refused the application.

(6) The Commissioners may charge a reasonable fee for the grant of a licence.

(7) If the Commissioners refuse to grant a licence which has been applied for they shall give reasons in writing for their refusal.

(8) If the Commissioners grant a licence upon terms or conditions, or with modifications, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

Appeals in respect of licences

13. If—

- (a) the Commissioners have refused to grant a licence pursuant to article 11 and the applicant for the licence is aggrieved by the refusal; or
- (b) the Commissioners have granted a licence upon terms or conditions, or with modifications, and the applicant is aggrieved by the Commissioners' decision as to such terms or conditions or modifications,

the applicant may appeal to the Secretary of State in accordance with article 26.

Moorings

Moorings provided by Commissioners

14. (1) The Commissioners may place, lay down, maintain, renew, use or remove such moorings in the harbour—

- (a) on land owned or leased by them or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner and lessee thereof, on any other land in the harbour

as they consider necessary or desirable for the convenience of vessels.

(2) The Commissioners may from time to time grant a licence of any mooring provided under this article to any person wishing to use the same for such periods, and on such terms and conditions, and on payment of such reasonable fees, as the Commissioners may from time to time determine.

Moorings provided by others

15. (1) The Commissioners may from time to time grant a licence to any person owning an appropriate interest in land within the harbour limits to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(2) A licence under this article—

- (a) may be granted for such a period and on such reasonable terms and conditions as the Commissioners think fit;
- (b) may relate to one or more moorings; and
- (c) may permit or restrict the sub-letting of those moorings.

(3) The Commissioners shall give notice to the applicant of their decision whether to grant a licence.

(4) If within three months from the date of the making of an application for a licence under this article the Commissioners do not give notice under paragraph (3), they shall be deemed to have refused the application.

(5) The Commissioners may charge a reasonable fee for the grant of a licence under this article and such fee may represent an amount to be paid instead of the harbour dues that would otherwise be payable in respect of the vessels using the moorings in question.

(6) Nothing in any licence granted under this article shall entitle any person to place, lay down, maintain, renew, use or have any mooring on land not owned or leased by that person or by the Commissioners or in which that person has no appropriate interest.

(7) The Commissioners shall have the right to refuse a licence to any person who is unable to establish ownership of an appropriate interest in land.

(8) The Commissioners shall not, when exercising their powers under this article, unreasonably refuse to grant a licence to any person.

(9) Any question of whether a licence has or has not been unreasonably refused, or as to the reasonableness of the terms and conditions of a licence, shall be determined by the Secretary of State on appeal made in accordance with article 26.

Offences as to moorings

16. Any person who—

- (a) intentionally obstructs any person acting under the authority of the Commissioners in setting out moorings;
- (b) intentionally and without lawful authority pulls up or removes any moorings or any part of any moorings;
- (c) places, lays down, maintains, renews or has in the harbour any mooring not provided by the Commissioners under article 14 or licensed by the Commissioners under article 15;
- (d) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring so provided or licensed by the Commissioners, or at a quay, jetty or other apparatus provided for the mooring of vessels;
- (e) without reasonable excuse causes or permits a vessel to be moored at a mooring provided by the Commissioners under article 14 or licensed by the Commissioners under article 15 which the person is not entitled to use; or
- (f) contravenes the terms or conditions of any licence granted under article 14 or article 15,

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

Moorings – enforcement provisions

17. (1) If any person commits an offence under article 7 in respect of any non-compliance with a requirement made under paragraph 1(h) of Schedule 3, or any offence under article 16(c), the Commissioners may remove the mooring in question and recover from that person the expenses incurred in doing so.

(2) If any person commits an offence under article 7 in respect of any non-compliance with a requirement made under paragraph 1(h) of Schedule 3, or any offence under article 16(d) or (e), the Commissioners may at any time after the expiration of the period of 7 days from the date of that offence—

- (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 licence fee payable under article 14;
 - (ii) any unpaid licence fee payable under article 15; and
 - (iii) the expenses of removal and disposal under this paragraph,

and shall hold any surplus proceeds of sale on trust for the owner of the vessel.

(3) If the proceeds of sale under paragraph (2) above are insufficient to reimburse the Commissioners for the expenses referred to in paragraph (2)(c)(iii), the Commissioners may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a debt.

(4) The Commissioners shall, before removing a vessel in exercise of their powers under this article, give 7 clear days' notice in writing of their intention to do so except in a case of emergency when they shall give notice as soon as reasonably practicable after they have removed the vessel.

Other provisions

Power to designate parts of harbour, etc.

18. (1) Subject to paragraphs (4) and (5), and to Schedule 4, but notwithstanding anything else in this or any other statutory provision of local application, the Commissioners may from time to time set apart or designate any part of the harbour for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or class of vessels or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Commissioners think fit.

(2) Without prejudice to the generality of paragraph (1), the Commissioners may exercise the powers of this article in relation to any part of the harbour during and for the purposes of any regatta, boat race or other event or function.

(3) No person or vessel shall, otherwise than in accordance with the setting apart or designation, make use of any part of the harbour so set apart or designated without the consent of the harbourmaster or other duly authorised officer of the Commissioners, and—

- (a) the harbourmaster or, as the case may be, such officer may order any person or vessel making use of it without such consent to leave or be removed; and
- (b) the provisions of section 58 of the Harbours, Docks, and Piers Clauses Act 1847⁽⁹⁾ shall extend and apply with appropriate modifications in relation to any such vessel.

(4) The Commissioners shall not exercise the powers of this article in such a way as to prevent the exercise of rights conferred by any licence granted pursuant to article 14(2) or article 15.

(5) Nothing in this article shall authorise the permanent or temporary stopping up or diversion or other interference with any public right of way over land within the harbour.

Fuel bowzers

19. (1) In this article “fuel bowser” means a movable tank, pump or other appliance for the fuelling of vessels and includes any vehicle, trailer or similar device on which the bowser is mounted.

(2) No person shall place, retain or use a fuel bowser on any land or on any wharf, quay or other work in the harbour unless the person is authorised to do so by a licence granted by the Commissioners.

(3) A licence under this article—

- (a) may be granted for such a period, and on such terms and conditions, as the Commissioners think fit; and
- (b) may relate to one or more fuel bowzers.

(4) The Commissioners may charge a reasonable fee for the grant of a licence under this article.

(5) Nothing in any licence granted under this article shall entitle any person to place, retain or use any fuel bowser on land not owned or leased by that person, or by the Commissioners, or in which that person has no appropriate interest.

(6) Any person who contravenes paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If any person commits an offence under paragraph (6) the Commissioners may—

- (a) remove the fuel bowser, including any fuel pipes or other equipment provided with it;
- (b) sell or otherwise dispose of the fuel bowser, pipes and equipment together with any fuel contained therein; and

(9) 1847 c.27.

- (c) recover out of the proceeds of sale any unpaid licence fee payable under paragraph (4) and the expenses of removal and disposal under this paragraph,

and shall hold any surplus proceeds of sale on trust for the owner of the fuel bowser.

(8) If the proceeds of any sale under paragraph (7)(b) above are insufficient to reimburse the Commissioners for the expenses referred to in paragraph (7)(c) the Commissioners may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a debt.

PART 3

MISCELLANEOUS AND GENERAL

Information for purpose of landing charges

20. (1) When any passengers are embarked on or disembarked from a vessel within the harbour, the owner or master of the vessel, if requested to do so by the Commissioners, shall provide to the Commissioners in writing details of the number of persons embarked on, or disembarked from, the vessel so as to enable the Commissioners to determine whether any of the Commissioners' published landing fees or other charges are payable in respect of those persons in accordance with section 26(2) of the Harbours Act 1964 or any other enactment applicable to the harbour.

(2) A request made under paragraph (1) may apply to a single vessel movement or (in the case of a vessel which habitually uses the harbour) to every occasion upon which the vessel arrives at or departs from the harbour.

(3) The owner or master of a vessel in respect of which a request is made under paragraph (1) shall provide the details so requested within such period (being not less than 24 hours) after the arrival or as the case may be the departure of the vessel as may be specified by the Commissioners.

(4) Paragraph (1) shall not apply in relation to non-commercial vessels occupying moorings within the harbour under licences granted by the Commissioners pursuant to article 14 or 15, or to vessels occupying moorings under licences granted under article 15, or to vessels paying visitor berthing rates to the Commissioners.

(5) For the purposes of paragraph (4), "non commercial vessel" means any vessel used for sport or recreation other than a vessel which is carrying, or is available to carry, members of the general public for hire or reward.

(6) Any person who without reasonable excuse fails to comply with any requirement made under paragraph (1), or who in compliance with such a requirement provides any information which that person knows to be false, or recklessly provides information which is false in any material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Boarding of vessels

21. Any duly authorised officer of the Commissioners may, on producing if so required that officer's authority, enter and inspect a vessel in the harbour—

- (a) for the purposes (including the enforcement) of any enactment relating to the Commissioners or of any byelaw of the Commissioners or any general or special direction,;
- or
- (b) to prevent or extinguish fire;

but, except in an emergency, no entry shall be made under this article without notice first having been given to the owner or the person appearing to have charge of the vessel; and the notice shall have annexed to it a copy of this article.

Obstruction of officers

22. (1) Any person who—

- (a) intentionally obstructs or threatens an officer of the Commissioners acting in pursuance of this Order or in pursuance of any byelaw, direction or requirement made or given by the Commissioners;
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to give such an officer any information (including his name and address) which the officer may require for the purpose of the performance of the officer's functions,

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

(2) Any person who in giving such information makes a statement which that person knows to be false shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Notices

23. (1) Subject to the following provisions of this article, and to the other provisions of this Order, a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, shall be in writing and may be served by 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 Commissioners may employ this method of service until such time as the person informs them in writing that the person is 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(10) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if the person has 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, the person's 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 any person as having an interest on, or as the occupier of, any land, it may be served by —
 - (i) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

- (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, or handed to a member of the crew, 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;
 - (c) in the case of any notice or document served otherwise than under paragraph (5)(a) or (b), it may be served by displaying it at the office of the harbourmaster for the period of its duration.
- (6) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

Execution of documents

24. (1) Sections 44 and 45(1) of the Companies Act 2006⁽¹¹⁾ shall apply to the execution of documents by the Commissioners as though they were a company within the meaning of section 1(1) of that Act.

- (2) Sections 44 and 45(1) as so applied shall have effect—
- (a) as though for references to a director there were substituted references to a Commissioner;
 - (b) as though for references to every director of the company there were substituted references to every Commissioner; and
 - (c) as though for references to the secretary of a private company there were substituted references to the Chief Executive of the Commissioners or some other person authorised under paragraph 20 of Schedule 2 to the 2001 Order to act instead of the Chief Executive.

Provisions for protection of Sandhouse, etc.

25. (1) The following provisions shall have effect for the protection of the owner unless otherwise agreed in writing between the Commissioners and the owner.

- (2) In this article—
- “the owner” means the owner for the time being of the freehold interest in the property;
 - “the property” means the property referred to in paragraph (c) of section 63 (for the protection of Major C.J. Alexander and others) of the 1931 Order, that is, the building or structure in the parish of Freshwater known as Sandhouse with the roadway leading thereto and to low-water mark and the dock, pier and slipway in connection therewith;
 - “section 63” means section 63 of the 1931 Order.

(3) Nothing in this Order affects prejudicially the rights conferred on the owner by section 63.

(4) Without prejudice to the generality of paragraph (3) the Commissioners shall not give any general direction under article 4, or set apart or designate any part of the harbour under article 18, in such a way as to affect prejudicially the rights conferred on the owner by section 63.

(5) Any dispute between the Commissioners and the owner under this article shall be determined in accordance with subsection (4) of section 63.

Provisions as to certain appeals

26. (1) This article applies to any appeal under article 13 or article 15(9) by an applicant (“the applicant”) for a licence under article 11 or article 15, as the case may be.

(2) The applicant may bring an appeal within 28 days from the date on which the Commissioners give notice of their decision or the date on which they are under article 12(5) or 15(4) deemed to have refused the application, as the case may be.

(3) An appeal shall be made by notice in writing, stating the grounds of the appeal.

(4) A person who appeals to the Secretary of State shall at the same time send a copy of the person’s statement of appeal to the Commissioners and the Commissioners shall as soon as practicable afterwards furnish the Secretary of State with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(5) On an appeal the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions of the licence.

(6) The Commissioners shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (5).

Crown Rights

27. (1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise any person to take, use, enter upon or in any manner interfere with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or

(b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

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

Saving for Trinity House

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

Amendment of 2001 Order

29. (1) The 2001 Order shall be amended as follows.

(2) For articles 4 to 7 there shall be substituted the articles set out in Schedule 5 to this Order.

(3) In article 9(1)—

(a) the words “or the Councils” in the first place in which they occur shall be omitted; and

(b) for the words from “or the Councils” in the second place in which they occur to the end there shall be substituted “in accordance with article 4(3) to (6)”.

(4) In Schedule 2—

(a) for the expression “article 4(2)(a) or (b)” wherever it occurs there shall be substituted the expression “article 4(1)(a)”;

- (b) in paragraph 11(4)(a), for “above” there shall be substituted “of this Order in the form in which they existed immediately before the Yarmouth (Isle of Wight) Harbour Revision Order 2011 came into force.”.

Repeal and revocation of enactments, etc.

- 30.** (1) On the date of the coming into force of this Order—
- (a) the provision of the Act referred to in columns (1) and (2) of Part 1 of Schedule 6 to this Order shall be repealed to the extent specified in column (3) of that Part; and
 - (b) the provisions of the orders referred to in columns (1) and (2) of Part 2 of Schedule 6 to this Order shall be revoked to the extent specified in column (3) of the Part.
- (2) The repeals and revocations effected by paragraph (1) shall be subject to Part 3 of Schedule 6 to this Order.

Signed by authority of the Marine Management Organisation

J. Cross
Acting Chief Executive Officer
An authorised employee of the Marine
Management Organisation

26th May 2011

SCHEDULE 1

Article 3

HARBOUR LIMITS

The Outer Harbour

1. So much of the Solent as is situated below the level of high water and bounded on its seaward sides by imaginary straight lines –

- (a) commencing at a point 50° 42.38' N, 01° 31.00' W, and terminating at a point 50° 42.57' N, 01° 31.00' W;
- (b) commencing at a point 50° 42.57' N, 01° 31.00' W and terminating at a point 50° 42.86' N, 01° 29.88' W;
- (c) commencing at a point 50° 42.86' N, 01° 29.88' W and terminating at a point 50° 42.38' N, 01° 29.82' W;

and on its landward side by the level of high water within the area so enclosed, and by the imaginary line referred to in paragraph (2)(a).

The Inner Harbour

2. So much of the natural harbour at Yarmouth (Isle of Wight) and of the river Yar as is situated below the level of high water and enclosed–

- (a) by an imaginary straight line drawn across the harbour entrance, commencing at a point at the eastern end of the west breakwater (reference point 50° 42.39' N, 01° 29.90' W) and terminating at a point at the northern end of the Inner Pier (reference point 50° 42.39' N, 01° 29.35' W); and
- (b) by the northern side of the road bridge known as the Causeway;

and by the level of high water within the area so enclosed, including all adjoining creeks, bays and inlets to the extent that they are situated below the level of high water but excluding any areas situated to the west of the imaginary line described in section 14(1)(ii) of the 1931 Order.

3. All docks, marinas and other natural or artificial watered areas navigable by seagoing vessels which adjoin the portion of the river Yar described in paragraph 2 (other than those parts of the river Yar which lie upstream of the bridge mentioned in paragraph 2(b)), including all such areas which are separated from the river by lock gates, sluices or other moveable devices through which seagoing vessels may pass, whether or not the same are in existence at the date of the coming into force of this Order.

SCHEDULE 2

Article 2

BOUNDARIES OF THE ZONE

So much of the Outer Harbour as is situated below the level of high water and bounded on its seaward sides by imaginary straight lines–

- (a) commencing at a point 50° 42.373' North and terminating at a point 01° 30.360' West;
- (b) commencing at a point 50° 42.405' North and terminating at a point 01° 30.360' West;
- (c) commencing at a point 50° 42.405' North and terminating at a point 01° 30.543' West;
- (d) commencing at a point 50° 42.355' North and terminating at a point 01° 30.562' West

and on its landward side by the level of high water within the area so enclosed.

SCHEDULE 3

Article 4

PURPOSES FOR WHICH GENERAL DIRECTIONS MAY BE GIVEN

1. Navigation, control of vessels and moorings

- (a) Designating areas, routes, fairways or channels in the harbour which vessels are to use, or refrain from using, for movement, mooring or anchorage.
- (b) Securing that vessels in, or proposing to enter or leave, the inner harbour move only at certain times or during certain periods.
- (c) Limiting the speed of vessels.
- (d) Prohibiting—
 - (i) entry into the harbour by a vessel which for any reason would be or would be likely to become a danger—
 - (aa) to other vessels in the harbour, or to persons, property, flora or fauna in the harbour; or
 - (bb) to any navigable area of part of the fairway or channel in the harbour; and
 - (ii) entry into or navigation within any designated fairway or channel during any temporary obstruction of the fairway or channel.
- (e) Prohibiting entry into or movement in the inner harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke, provided that no direction given under this sub-paragraph shall prevent the entry into the inner harbour of any vessel seeking refuge from stress of weather.
- (f) Generally regulating the admission to, and the movement within, and the departure of vessels from the harbour or the removal of vessels, and for the good order and government of vessels whilst within the harbour.
- (g) Regulating the navigation, berthing and anchoring of vessels within the inner harbour and their manner of navigation, the use of engines and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the inner harbour, provided that no direction under this sub-paragraph shall require the installation of engines or any other equipment on a vessel.
- (h) Making requirements as to the mooring of vessels within the harbour (whether at moorings licensed under article 14 or licensed under article 15, or otherwise).
- (i) Prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground within the harbour;
 - (ii) by vessels or other devices used for marking obstructions within the harbour; and
 - (iii) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the harbour.
- (j) Prescribing the action to be taken in relation to vessels which have become adrift, or sunk, or run aground.

2. Health, safety and protection of property

- (a) So far as is necessary for the safety of navigation, requiring or regulating the use of tugs in relation to a vessel.

- (b) Preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property (including aids to navigation), or danger or injury to persons in the harbour.
- (c) Regulating or preventing the use within the harbour, and within any vessels within the harbour of fires, lights, tobacco, fireworks or any other substance, equipment, tools or appliances which the Commissioners consider involve a risk of fire, explosion or chemical reaction.
- (d) Requiring the reporting of accidents and of other incidents giving rise to the risk of death or injury, or damage to property, occurring in the harbour.

3. Use of harbour (including goods, obstructions and waste)

- (a) Regulating the use, operation and superintendence of the harbour and any works and facilities in the harbour.
- (b) Regulating the shipping and unshipping, landing, carrying, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, in the harbour.
- (c) Preventing and removing obstructions or impediments in the harbour.
- (d) Prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour.
- (e) Preventing the leaving or disposal of any waste matter in the inner harbour except at places, or in a manner, prescribed by the Commissioners.
- (f) Regulating the use of ferries and water taxis.
- (g) Providing for the registration of passenger boats and those engaged in navigating passenger boats in the harbour.
- (h) Regulating or prohibiting the use in the inner harbour of non-buoyant personal watercraft.
- (i) Regulating the holding of regattas and other public events in the harbour.
- (j) Regulating the use in the inner harbour of yachts, sailing boats, rowing boats, pleasure craft and other small craft.
- (k) Regulating the launching or landing of vessels and the use of slipways and landing places in the inner harbour, provided that no direction under this sub-paragraph shall have the effect of permanently or temporarily stopping up or diverting or shall otherwise interfere with any public right of way over land in the harbour.
- (l) Regulating the landing or taking off of aircraft (including seaplanes) in the harbour.
- (m) Regulating or prohibiting diving, surfing, swimming, water skiing and other recreational activities or pursuits of whatever nature in the whole or any part of the inner harbour.
- (n) Designating any beaches or any other areas within the zone for diving, swimming and other related recreational activities or pursuits during the whole or any part of the period from 1st April to 31st October in any year.
- (o) Regulating or prohibiting the launching, landing or movement of vessels from or on or in any part of the zone which may from time to time be designated under sub-paragraph (n) provided that no direction under this sub-paragraph shall prevent the entry of any vessel into the zone in an emergency.
- (p) Regulating or prohibiting the fishing for or the taking of marine creatures of any type and by whatever means, from any installation or structure of any kind in the harbour, or from any vessel in the harbour, where such fishing or taking interferes with the operation of, or the safety of navigation in, the harbour.
- (q) Regulating or prohibiting the digging for bait in the harbour where such digging may endanger any structure or cause obstruction or danger to navigation.

4. Use of equipment and maintenance

- (a) Regulating the use of any equipment (including engines) forming part of or carried on the vessel provided that no direction under this sub-paragraph shall require the installation of engines or any other equipment on a vessel.
- (b) Requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels and otherwise in the harbour.
- (c) Regulating the careening, breaking, maintenance and repair of vessels and the carrying out of any other works in relation to vessels in the harbour.

5. Passengers and other persons

- (a) Regulating the embarkation of persons on, or the disembarkation from, vessels in the harbour.
- (b) For the purpose of preventing danger to persons or property or inference with the safe and efficient operation of the harbour, regulating the conduct of all persons in the harbour not being—
 - (i) police constables; or
 - (ii) servants of the Crown; or
 - (iii) members of a fire brigade whilst in the exercise of their duties as such.
- (c) Prohibiting persons from smoking if working or employed in or entering the harbour, or any part of the harbour.

6. Environmental protection

- (a) Making requirements in relation to any part of the harbour which has been designated, or has otherwise been given special protection or status, under any enactment by reason of its natural beauty, flora, fauna or archaeological or geological or physiographical features or any other natural features being requirements for the conservation of such natural beauty, flora, fauna or archaeological or geological or physiographical features or other natural features,
- (b) No direction under sub-paragraph (a) —
 - (i) shall prohibit or interfere with the exercise of any public right of navigation; or
 - (ii) shall be given otherwise than in order to give effect to, or to complement, any provision of any enactment applicable to the conservation of the part of the harbour in relation to which the direction is given.

7. Miscellaneous

For the purpose of preventing interference with the safe and efficient operation of the harbour—

- (a) prohibiting the use of or regulating the use, movement, speed, placing, loading, fuelling, unloading, driving and parking of vehicles within the harbour
- (b) regulating or prohibiting the carrying on of trading or commercial activities within the harbour; or
- (c) regulating the control of animals in the harbour.

8. Provision of information

Requiring the master of a vessel to give to the harbourmaster information relating to the vessel reasonably required by the harbourmaster for effecting any of the purposes of this Schedule.

SCHEDULE 4

Articles 5 and 18

GENERAL DIRECTIONS AND DESIGNATIONS:
PUBLICATION AND CONSULTATION, ETC.

1. In this Schedule—

“the consultation period” means the period referred to in paragraph 4;

“designation” means any setting apart or designation of any part of the harbour under article 18;

“the objectors” means any relevant consultees who make an objection under paragraph 6(c);

“the relevant consultees” means—

- (a) every advisory body established under article 15 of the 2001 Order;
- (b) if the designation or the giving, amending or revoking of the general direction could reasonably be considered to affect in any material respect the holders of licences granted by the Commissioners under article 14 or 15 of this Order, every such licence holder;
- (c) any bodies established on a national basis for purposes which include as a main objective the representation of the interests of owners or operators of leisure or commercial vessels of a type which—
 - (i) are likely to berth, moor or operate within the harbour limits (or are capable of doing so), and
 - (ii) could reasonably be considered to be affected in any material respect by the giving, amending or revoking of the general direction

including without prejudice to the generality of the foregoing, the Royal Yachting Association, the British Marine Federation or the successors of either of these bodies;

(d) if the designation or the giving, amending or revoking of the general direction could reasonably be considered to affect in any material respect—

- (i) any particular business or trade carried on within the harbour limits; or
- (ii) any operator of a scheduled ferry service to or from the harbour,

any local body established for the purpose of representing the interests of persons carrying on that business or trade, or the operator of that ferry service, as the case may be; and

(e) such other persons or bodies not falling within any of sub-paragraphs (a) to (d) above as the Commissioners may consider would be reasonably likely to be affected in any material respect by the designation or the giving, amending or revoking of the general direction.

2. Before making, giving, amending or revoking a designation or general direction the Commissioners shall, except in an emergency—

- (a) publish notice of their intention to do so (“the proposal”) on their website and once in a local newspaper circulating in the area of the harbour;
- (b) display at the harbour office a copy of the designation or direction which is proposed to be made, given, amended or revoked, as the case may be; and
- (c) serve a copy of the notice on the relevant consultees.

3. The notices published and served under paragraph 2 shall—

- (a) state a place where copies of the proposed designation or direction, and of any existing designation or general direction which is proposed to be revoked or amended, may be inspected and bought, and the price of each copy;
- (b) state that representations may be made to the Commissioners in writing during the consultation period.

4. During the period of 84 days following publication of the notice under paragraph 2(a), or such longer period as may be specified in the notice, the Commissioners shall consult the relevant consultees.

5. The Commissioners shall not make, give, amend or revoke the designation or general direction until they have considered all representations made by the relevant consultees during the consultation period.

6. As soon as reasonably practicable after the expiry of the consultation period, the Commissioners shall give notice to all relevant consultees who have made representations during that period—

- (a) stating whether the Commissioners intend to make, give, amend or revoke the designation or general direction, and responding to any such representations;
- (b) specifying whether they intend to make any modifications to the proposal; and
- (c) if the Commissioners intend to make, give, amend or revoke the designation or direction, informing those consultees of their right to object to the proposal within 28 days from the date of the notice or such longer period as may be specified in the notice.

7. Where none of the relevant consultees have made representations in respect of the proposal during the consultation period or, having made representations, do not object to the proposal, in accordance with paragraph 6(c), the Commissioners may make, give, amend or revoke the designation or general direction.

8. Where any relevant consultee objects to a proposal in accordance with paragraph 6(c), the following procedures shall have effect unless the Commissioners decide not to proceed with the making, giving, amending or revoking of the designation or direction.

9. The issue shall be referred to an independent person (“the adjudicator”) to be agreed between the Chairman of the Commissioners and the objector (or each of the objectors if more than one) or if, agreement is not reached within 28 days after the expiration of the period referred to in paragraph 6(c), to be appointed by the President of the London Maritime Arbitrators Association.

10. The remuneration (if any) of the adjudicator shall be as agreed between the Commissioners and the adjudicator.

11. The adjudicator shall be entitled to be reimbursed in respect of all reasonable expenses incurred in discharging functions conferred on the adjudicator under this Schedule.

12. Responsibility for payment of the adjudicator’s remuneration and expenses shall be as decided by the adjudicator in accordance with paragraph 19.

13. The appointment of an adjudicator shall not take effect until the adjudicator has consented in writing to the appointment and delivered the signed consent to the Commissioners.

14. The adjudicator shall allow a reasonable opportunity for the Commissioners and the objectors to make representations to, or be heard by, the adjudicator and shall then make a report in writing (“the report”) containing the adjudicator’s findings and reasoned recommendations on the issue to the Commissioners.

15. The adjudicator shall send a copy of the report to the objectors.

16. The adjudicator shall use reasonable endeavours to ensure that the steps referred to in paragraph 14 are completed within 28 days of his or her appointment.

17. The Commissioners shall not be bound to give effect to the recommendations contained in the report of the adjudicator, but in making their decision to give, amend or revoke the direction they shall have regard to the report.

18. The Commissioners shall give notice to the adjudicator and the objectors of their decision stating the reasons for that decision as soon as reasonably practicable after it has been taken.

19. The adjudicator shall decide who out of the Commissioners and the objectors (“the parties”) shall be liable to pay the adjudicator’s remuneration and expenses and whether payment shall be the responsibility of one party alone, or more than one party, and in what proportions.

20. In taking any decision under paragraph 19, the adjudicator shall have regard to the conclusions expressed in the report and the merits of the objections.

21. Subject to paragraph 19, the parties shall bear their own costs of any proceedings under this Schedule.

22. The adjudicator shall not be personally liable for anything done by him or her in accordance with this Schedule.

23. Except as otherwise provided in this Schedule, the adjudicator may determine the procedures to be followed under this Schedule.

24. Where the Commissioners propose to make, give or amend a designation or general direction in a form materially different from that notified under paragraph 6 or recommended by the adjudicator under paragraph 14, the Commissioners shall proceed as if the proposal were a new proposal; and the provisions of this Schedule shall apply with all necessary modifications to that proposal.

25. (1) This paragraph has effect where the Commissioners have made, given or amended a designation or general direction (“an emergency designation or direction”), or have revoked a designation or general direction, in an emergency without observing the requirements of paragraphs 1 to 24.

(2) Where this paragraph has effect, the Commissioners shall revoke the emergency designation or direction, or as the case may be reinstate the designation or direction which has been revoked, as soon as reasonably practicable after the emergency ceases to exist unless they decide to proceed in accordance with sub-paragraph (3).

(3) If the Commissioners propose to give permanent effect to an emergency designation or direction, or to the revocation of a designation or a general direction, they shall inform the relevant consultees as soon as practicable of their proposals, and the provisions of paragraphs 1 to 24 shall apply with all necessary modifications to those proposals.

SCHEDULE 5

Article 29

NEW ARTICLES 4, 5 AND 6 OF 2001 ORDER

“Constitution of Commissioners

4. (1) As from the effective date the Commissioners shall consist of:—
- (a) eight persons holding office in accordance with this article and article 5; and
 - (b) the Chief Executive of the Commissioners.

(2) Every appointed Commissioner holding office on the effective date shall remain in office until the date upon which the Commissioner would have ceased to hold office had this Order not been made.

(3) Appointments of appointed Commissioners after the effective date shall be made by the Commissioners holding office at the time of the appointment having regard to the advice of the appointments panel.

(4) Each appointed Commissioner shall be a person who appears to the appointments panel and to the Commissioners making the appointment to have special knowledge, experience or ability relevant to the efficient, effective and economic discharge by the Commissioners of their functions.

(5) Without prejudice to paragraph (4), the appointed Commissioners shall include at least one person who appears to the appointments panel and to the Commissioners making the appointment or appointments to have special knowledge, experience or ability in one or more of—

- (a) accountancy or financial management;
- (b) coastal environment;
- (c) the laws relating to England.

(6) In advising on and making an appointment under paragraph (3), the appointments panel and the Commissioners shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the appointment of Commissioners.

(7) In this article and in article 6—

“the appointed Commissioners” means the Commissioners referred to in paragraph (1)

(a);

“the effective date” means the last Friday of the month next following the month current at the commencement of the Yarmouth (Isle of Wight) Harbour Revision Order [2011].

Appointments panel

5. (1) The Commissioners shall appoint three persons to act as the appointments panel whenever any appointment is to be made under article 4 above.

(2) The persons appointed under paragraph (1) above shall include at least one Commissioner and at least one person who is independent of the Commissioners.

(3) After interviewing candidates the appointments panel shall give advice to the Commissioners as to the person or persons to be appointed.

Terms of office of Commissioners

6. Subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to, this Order, an appointed Commissioner appointed after the effective date shall hold office for a term of three years unless the Commissioners decide, having regard to the advice of the appointments panel at the time when any such appointment is made, that a shorter term of office should apply to that appointment, in which case the term of office shall be such as the Commissioners shall so decide.”

SCHEDULE 6

Article 30

REPEAL, REVOCATIONS AND SAVING PROVISIONS

PART I - Repeal

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
(1)	(2)	(3)
1931 Ch.lxxxix	Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931	Section 14

PART 2 – Revocations

<i>Chapter</i>	<i>Short title</i>	<i>Extent of revocation</i>
(1)	(2)	(3)
S.I. 1981/318	Yarmouth (Isle of Wight) Harbour Revision Order 1980	Whole order
S.I. 1996/2480	Yarmouth (Isle of Wight) Harbour Revision Order 1996	Whole order
S.I. 2001/2185	Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001	Article 4 to 7

PART 3 – Savings

1. The repeal of the Act and Orders mentioned in Parts I and II of this Schedule (“the former legislation”) shall have effect subject to the following provisions of this Part of this Schedule.

2. In so far as anything done under any provision of the former legislation could have been done under any provision of this Order it shall not be invalidated by the repeal or revocation but shall have effect as if done under that last-mentioned provision.

3. Anything begun under any provision of the former legislation may be continued under any provision of this Order relating to the same matter as if begun under that provision.

4. Where any period of time specified in, or having effect in relation to, any provision of the former legislation is current on the date of the coming into force of this Order, any provision of this Order relating to the same matter shall have effect as if it were in force when that period began to run.

5. References in this Order to things done, left undone, suffered, or occurring in the past shall, for the continuity of operation between the former legislation and any provision of this Order relating to the same matter, be construed as including reference to things done, left undone, suffered or occurring before the date of the coming into force of this Order.

6. Where an instrument or document refers to any provision of the former legislation, the reference shall, except where the context otherwise requires, be construed as, or as including, a reference to any provision of this Order relating to the same matter.

7. Where an Act or Order is repealed or revoked by this Order subject to exceptions, and a provision (“the old provision”) included in the repeal or revocation is material for the interpretation of a provision excepted from repeal or revocation, or of any provision of this Order (“the relevant

provision”), reference may be made to the old provision notwithstanding its repeal or revocation for the purpose of interpreting the relevant provision.

8. Nothing in this Part of this Schedule shall prejudice the operation of sections 15 to 17 of the Interpretation Act 1978(12) (effect of repeals).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers additional powers on the Yarmouth (Isle of Wight) Harbour Commissioners for the management and regulation of Yarmouth (Isle of Wight) Harbour, amends the provisions governing the appointment of Commissioners and makes other provisions. The Order effects related repeals and amendments to enactments relating to the Harbour.

Articles 4 to 9 of the Order confer powers to make general and special directions.

Article 4 confers powers on the Harbour Commissioners to give general directions in respect of the harbour for any purpose set out in *Schedule 3* and *article 5* and *Schedule 4* regulate the procedures for making such directions, as well as for making designations of parts of the harbour under *article 18*.

Article 6 empowers the harbourmaster to give special directions as to the use of the harbour and other matters relating to it.

Article 7 establishes an offence for failing to comply with a general or special direction and *article 8* confers powers on the harbourmaster in the event of failure to comply with a special direction. *Article 9* provides that the giving of a direction does not affect the existing responsibilities of a vessel’s master.

Articles 10 to 13 concern harbour and taxi water services. *Article 10* prohibits the provision of such services without a licence issued by the Commissioners under *article 11*. *Article 12* regulates the conditions attaching to licences, their term, the application procedure and the charging of fees. *Article 13* provides for appeals against decisions of the Commissioners.

Articles 14 to 17 concern moorings. *Articles 14 and 15* provide for the provision and licensing of moorings by the Commissioners, *article 16* creates offences with respect to moorings and *article 17* provides for enforcement action by the Commissioners.

Article 18 permits the Commissioners to designate parts of the harbour for particular uses and provides for the enforcement of designations. *Article 19* provides for the licensing by the Commissioners of the use of fuel bowsers in the harbour area.

The miscellaneous and general provisions in Part 3 of the Order relate to the provision of embarkation information for the determination of landing charges (*article 20*), the boarding of vessels by authorised officers for the purposes of enforcement and other provisions or to deal with fire (*article 21*), the obstruction etc. of officers (*article 22*) and the service and execution of documents (*articles 23 and 24*). In addition, *article 25* protects the rights conferred on certain land owners by the Yarmouth (Isle of Wight) Pier and Harbour Order 1931, *article 26* regulates the bringing and conduct of appeals under *articles 13 and 15(9)*, *articles 27 and 28* protect, respectively, rights of the Crown and of Trinity House, *article 29 and Schedule 5* amend the Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001 in particular to introduce new provisions concerning

(12) 1978 c.30

the appointment and terms of office of Harbour Commissioners and *article 30 and Schedule 6* make a number of repeal, revocation and saving provisions.

A full regulatory assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.