

**202[X] No. 0000**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Dover Harbour Revision Order 202[X]**

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

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## SCHEDULES

### SCHEDULE — REVOCATION / REPEAL

The Dover Harbour Board has applied for a harbour revision order in accordance with section 14(2)(a) of the Harbours Act 1964(a) (“the Act”).

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(b) 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 14(2)(b), and in exercise of the powers conferred by section 14(1) and (3) of the Act, makes the following Order.

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- (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.

# PART 1

## PRELIMINARY

### Citation, commencement and extent

1.—(1) This Order may be cited as the Dover Harbour Revision Order 202[X] and comes into force on [DATE].

(2) This Order extends to England and Wales.

### Interpretation

2. In this Order—

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

“the 1954 Act” means the Dover Harbour Consolidation Act 1954(b);

“the 1963 Act” means the Dover Harbour Act 1963(c);

“the 1995 Act” means the Merchant Shipping Act 1995(d);

“the 1964 Order” means the Defence (Transfer of Functions) (Dover Harbour) Order 1964(e);

“the 1969 Order” means the Dover Harbour Revision Order 1969(f);

“the 1978 Order” means the Dover Harbour Revision Order 1978(g);

“the 2006 Order” means the Dover Harbour Revision Order 2006(h);

“the 2012 Order” means the Dover Harbour Revision Order 2012(i);

“the 2014 Order” means the Dover Harbour Revision Order 2014(j);

“the 2016 Order” means the Dover Harbour (Constitution) Revision Order 2016(k);

“the 2022 Order” means the Dover Harbour Revision Order 2022(l);

“ashore” means all those parts of the harbour not within the wet harbour area;

“the Board” means the Dover Harbour Board which continues to be incorporated under section 7 of the 1954 Act (Board to continue incorporated);

“byelaw” means a byelaw made under section 83 of the 1847 Act (byelaws may be made for all or any of the purposes herein named), section 43 of the 1954 Act (control of seashore and promenade), or article 13 of the 2006 Order (additional power to make byelaws);

“director” means member of the Board;

“the Dover Harbour Acts and Orders 1954 to 2022” means the 1954 Act, the 1963 Act, the 1964 Order, the 1969 Order, the 1978 Order, the 2006 Order, the 2012 Order, the 2014 Order, the 2016 Order and the 2022 Order;

“the Dover Port Users Group” means the body referred to in article 9(2)(b) of the 2016 Order (advisory bodies) or any replacement thereof in accordance with that article;

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

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- (a) 1847 c. 27.  
(b) 2 & 3 Eliz. 2. Ch. iv.  
(c) 1963 Ch. xxix.  
(d) 1995 c. 21.  
(e) S.I. 1964/932.  
(f) S.I. 1969/1578.  
(g) S.I. 1978/1069.  
(h) S.I. 2006/2167.  
(i) S.I. 2012/416.  
(j) S.I. 2014/2720.  
(k) S.I. 2016/250.  
(l) S.I. 2022/709.

“enactment” means any enactment whether public general or local and includes any order, byelaw, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“general direction” means a direction given under article 7 (power to make general directions as to the use of the harbour, etc.);

“harbour” means Dover Harbour and has the meaning given by section 4 of the 1954 Act (interpretation);

“harbour facilities” includes, but is not limited to, shipping, fisheries, marine, energy, fuel and alternative power, 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 harbour limits plan referred to in the Dover Harbour Revision Order 202[X]”, one copy of which is deposited at the offices of the Marine Management Organisation and the other at the harbour office;

“the harbour master” means any person appointed as such by the Board, and includes the duly authorised deputies and assistants of the harbour master and any other person authorised by the Board to act, either generally or for a specific purpose, in the capacity of harbour master;

“harbour operations” include—

- (a) the marking, lighting or dredging of the harbour or any part of the harbour;
- (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 and 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;
- (i) the control of use of the harbour by members of the public and other third parties (including movement, conduct, authorised activities and 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 area vested in, occupied or administered (for the time being) by the Board 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 purple on the harbour premises plan;

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

“the harbour undertaking” means the undertaking carried on by the Board at and in connection with the harbour authorised by this Order and the Dover Harbour Acts and Orders 1954 to 2022;

“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;

“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;

“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 10 (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<sup>(a)</sup>;
- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949<sup>(b)</sup> (coast protection authorities); or
- (c) any operator of an electronic communications network;

“Trinity House” means the Corporation of Trinity House of Deptford Strond<sup>(c)</sup>;

“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<sup>(d)</sup>, boat, houseboat, raft or craft of any description, however propelled or moved, and includes non-displacement craft, watercraft, a hydrofoil vessel, or an 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) 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 1995 Act;

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

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

3.—(1) The 1847 Act (except sections 6 to 20, 22 to 26, 28 to 32, 35, 37, 38, 41, 42, 49, 50, 54, 55, 59 to 62, 66, 67, 69 to 73, 75, 77, 80, 84 to 92 and 97 to 102), (so far as applicable to the purposes and not inconsistent with the provisions of this Order or the 1954 Act), is incorporated with this Order and the 1954 Act respectively subject to the modifications stated in paragraphs (2) to (6) below, and any existing incorporation of the 1847 Act in the 1954 Act ceases to have effect.

(2) Section 53 of the 1847 Act (penalty on shipmasters not complying with directions of the harbour master) has effect subject to the modification that for the words “level 2” there are substituted the words “level 4”.

(3) Section 63 of the 1847 Act (penalty on vessels lying near the entrance of harbour or dock without permission) has 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 liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) Section 68 of the 1847 Act (goods may be removed from the quays, &c. after lying there longer than allowed by byelaws) has effect subject to the modification that after the word “byelaws” there is inserted the words “or general directions”.

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(a) 1990 c. 8.

(b) 1949 c. 74, section 1 was amended by the Local Government Act 1972 (c. 70), Schedule 30.

(c) The Corporation of Trinity House, Tower Hill, London EC3N 4DH.

(d) As defined in section 57 (interpretation) of the Harbours Act 1964 (c. 40).

(5) Section 74 of the 1847 Act (owner of vessel answerable for damage to works) has effect subject to the modification that the words—

- (a) “or person having the charge”; and
- (b) “provided always” to the end of the section,

are omitted.

(6) In construing the provisions of the 1847 Act as incorporated with this Order and the 1954 Act respectively—

- (a) the expression “the special Act” means this Order and the 1954 Act respectively;
- (b) the expression “the undertakers” means the Board;
- (c) the expression “the harbour, dock, or pier” means the harbour;
- (d) for the definition of the word “vessel” in section 3 of the 1847 Act (interpretation) there is to be substituted the definition of that word in article 2 of this Order;
- (e) the reference in section 53 of the 1847 Act (penalty on shipmasters not complying with directions of the harbour master) to notice of a direction by the harbour master served on a vessel is not to be construed as requiring the notice to be in writing and may include the communication of the notice orally or otherwise.

## PART 2

### CONSTITUTION AND GENERAL FUNCTIONS

#### Constitution

4.—(1) The 2016 Order is amended as follows.

(2) In article 3 (new constitution)—

- (a) in paragraph (1)—
  - (i) for “On and after the new constitution date” substitute “Subject to article 5 of the Dover Harbour Revision Order 202[ ] (transitional arrangements)”;
  - (ii) in sub-paragraph (a) for “.” substitute “;”;
  - (iii) omit sub-paragraph (b),
  - (iv) in sub-paragraph (c) for “four” substitute “six”,
- (b) in paragraph (2) omit “, (b)”;
- (c) in paragraph (3)—
  - (i) for “4” substitute “5 of the Dover Harbour Revision Order 202[ ] (transitional arrangements)”;
  - (ii) in sub-paragraph (a) for “, and” substitute “.”;
  - (iii) omit sub-paragraph (b),
- (d) omit paragraphs (5) to (7) and (9);
- (e) in paragraph (8) omit—
  - (i) “or (3)(b)”;
  - (ii) from “and if the Board’s chair” to the end of the paragraph,
- (f) in paragraph (10)—
  - (i) omit—
    - (aa) “or (b)”;
    - (bb) “(but without prejudice to the foregoing paragraphs)”;
  - (ii) in sub-paragraph (h) omit “or”;

- (iii) after sub-paragraph (h) insert—
  - “(i) the position of the harbour within the local community and local economy;”,
- (iv) in sub-paragraph (i) for “(i)” substitute “(j)”.
- (3) Omit article 4 (appointment and terms of office of the first directors).
- (4) In article 5 (terms of office of subsequent directors) for “3(1)(a), (b) or (c) (other than a director mentioned in article 4)” substitute “3(1)(a) or (c)”.
- (5) In article 6 (casual vacancies)—
  - (a) for paragraph (1) substitute—
    - “(1) A casual vacancy arising in the office of—
      - (a) a chair appointed by the Secretary of State under article 3(1)(a); or
      - (b) ...
      - (c) a director appointed by the Board under article 3(1)(c),
 must, unless it is not reasonably practicable to do so, be filled by the appointment of a director by the Secretary of State or, as the case may be, the Board in accordance with article 3(2) to (11).”;
  - (b) omit paragraph (2);
  - (c) in paragraph (3) for “3(1)(b) or (c)” substitute “3(1)(c)”.

### **Transitional arrangements**

**5.—**(1) Subject to paragraph (2) of this article and paragraphs 4 and 5 of Schedule 2 to the 2016 Order (incidental provisions relating to the Board), the persons who are directors appointed under article 3(1)(b) of the 2016 Order immediately prior to the date of this Order continue to be directors until the end of their current terms

(2) From the date of this Order and for the purposes of article 6 of the 2016 Order (casual vacancies), a casual vacancy arising in the office of—

- (a) a director referred to in paragraph (1) must be filled by the appointment of a director by the Board;
- (b) the chair may be filled by the Secretary of State appointing a director referred to in paragraph (1).

### **General functions**

**6.—**(1) The Board may, subject to the provisions of this Order, take all such steps as it considers necessary or desirable for the maintenance, operation, management and improvement of the harbour and its approaches and the harbour facilities provided within the harbour or in connection with the harbour undertaking, and for the conservation of the harbour’s flora, fauna and geological and physiographical features of special interest.

(2) For those purposes and without limiting the scope of paragraph (1), the Board may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities therein;
- (b) subject to holding 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, retain, 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) In the exercise of the powers of sub-paragraph (2)(b), the Board 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.
- (4) This article is without limitation of the powers of the Board under or by virtue of any other enactment.

## PART 3

### GENERAL DIRECTIONS AND SPECIAL DIRECTIONS

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

7.—(1) The Board may, in accordance with the requirements of article 8 (procedure for giving, amending or revoking general directions), give a general direction for all or any of the following purposes—

- (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 in relation to those matters.

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

(4) The Board must keep and make available for inspection at the harbour office and on the harbour website a public register of all in force general directions(a).

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

8.—(1) Subject to paragraph (7), if the Board 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 Dover Port Users Group, and

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(a) The public register of all in force general directions may be inspected during office hours at the harbour office at Harbour House, Marine Parade, Dover CT17 9BU and via the harbour website at [www.portofdoover.com/](http://www.portofdoover.com/).



- (iv) such other persons as it considers appropriate for the purposes of the application of this provision,
  - (b) on the same date as the notice given in accordance with sub-paragraph (a), place a notice of the proposal on the harbour website and in prominent locations at the harbour and keep them on display for a minimum of six weeks;
  - (c) consult with the designated consultees upon the proposal and allow a period of not less than six weeks beginning with the date of the notices 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 Board 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 Board 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 Board proposes to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days beginning with the date of the notice given in accordance with sub-paragraph (e), or such longer period as the Board may specify.
- (2) Where the Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board 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 Board ‘proceeding’ with a proposal is to be read as a reference to the Board determining that the direction or amendment should remain in force.

### **Publication of general directions**

**9.**—(1) Subject to paragraph (4), the Board 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 harbour website for the period of 28 days from the date of publication of the notice in the newspaper.

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

(3) The Board must display notices of general directions that apply to the harbour premises at prominent locations within the harbour.

(4) In an emergency, the Board may give notice of the giving or amendment of a general direction in any manner which it considers to be appropriate.

### **Special directions**

**10.**—(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 discharge or 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 (including wildlife) 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 to whom the direction is addressed, either by name or by a description sufficient to enable the person 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 and byelaws**

**11.—**(1) A person who fails to comply with a general direction or special direction is 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 is 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.

(3) The Board may impose a fine not exceeding level 4 on the standard scale for the breach of any byelaws made or amended after the date of this Order.

#### **Enforcement of special directions**

**12.—**(1) Without limiting any other remedy available to the Board, if a special direction is not complied with within a reasonable time, the harbour master may put persons on board the vessel subject to a special direction 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 and, after reasonable inquiry has been made, the master cannot be found, the harbour master may proceed as if the direction had been given and not complied with.

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

#### **Master's responsibility in relation to directions**

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

#### **Boarding of vessels and vehicles**

**14.—**(1) A duly authorised officer of the Board 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 including any byelaws or general directions of the Board relating to the harbour), including the enforcement of any enactment.

(2) Such advance notice as is reasonably practicable in the circumstances must be given to the owner or master of the vessel or the owner of the vehicle before a duly authorised officer of the Board enters and inspects a vessel or vehicle under paragraph (1) except—

(a) in an emergency; or

(b) where the giving of advance notice would obstruct the purpose of exercising the power.

(3) If the owner or master of the vessel or the owner of the vehicle cannot be identified after reasonable enquiries have been made, notice may be given by affixing it to the vessel or vehicle.

#### **Saving for existing directions, byelaws etc.**

15. Any general direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Board in relation to the harbour undertaking and in force immediately before or on the date on which this Order comes into force continues to have effect, notwithstanding the amendments set out in articles 27 to 30 and the repeals and revocations set out in article 31 (revocation / repeal) and the Schedule (revocation / repeal).

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **Power to dredge**

16.—(1) The Board 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 Board in exercise of the powers of this article are to be the property of the Board and may be used, sold, deposited or otherwise disposed of as the Board may think fit.

(3) Materials dredged up or removed by the Council in the exercise of the powers of this article must not be laid down or deposited in contravention of the provisions of any enactment relating to the disposal of waste.

#### **Power with respect to disposal of wrecks**

17.—(1) In its application to the Board, 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 the approaches to the harbour in relation to a vessel sunk, stranded or abandoned before, on or after, the coming into force of this Order.

(2) Subject to paragraph (3), and to any enactment in force limiting a person's liability, the Board may recover from the owner of any vessel sunk, stranded or abandoned before, on or after the coming into force of this Order in relation to which it has exercised its powers under section 252 of the Act of 1995 (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 Board an emergency, paragraph (2) applies in relation to any vessel only if, before exercising the powers under section 252 of the Act of 1995 (powers of harbour and conservancy authorities in relation to wrecks) in relation to that vessel (other than the power of lighting and buoying), the Board has given to the owner of the vessel not less than 48 hours' notice of its intention to do so.

(4) If, before the expiry of a notice served under paragraph (3) the Board receives counter-notice in writing from the owner of the vessel stating they will dispose of the vessel themselves, the owner is at liberty to do so.

(5) If a counter-notice is received in accordance with paragraph (4), the Board must not exercise the powers in section 252 of the Act of 1995 (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 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 Board.

(6) A notice under paragraph (3) must be served by—

- (a) delivering it to the owner;
- (b) sending it to the owner by registered post or recorded delivery at their registered office, last known place of business or home address in the United Kingdom; or
- (c) displaying the notice at the harbour office and electronically on the harbour website for the period of its duration, if the owner or any such registered office, place of business or home address is not known to the Board, or is not in the United Kingdom.

(7) 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.

(8) The powers conferred on the Board by this article are in addition to any other powers exercisable by it for or with respect to the removal of wrecks within the harbour and its approaches.

### **Power to lay moorings**

**18.—**(1) The Board 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; or
- (b) with the consent in writing of the owner and any lessee, on any other land in the harbour.

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

(3) In this article and articles 19 (licensing of moorings) and 20 (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**

**19.—**(1) The Board may 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 period and on such terms and conditions as the Board thinks fit;
- (b) may relate to one mooring, or to several moorings.

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

(4) In respect of moorings already lawfully laid down in the harbour at the date this Order comes into force, a licence under paragraph (1) must be obtained by the owner or user of the mooring within 12 weeks of that date.

### **Offences as to moorings etc.**

**20.—**(1) A person commits an offence if they—

- (a) intentionally obstruct any person acting under the authority of the Board in setting out moorings in the harbour;

- (b) intentionally and without lawful authority pull up or remove any mooring or any part of any mooring in the harbour;
- (c) place, lay down, maintain, renew or have in the harbour any mooring not provided under article 18 (power to lay moorings) or licensed under article 19 (licensing of moorings);
- (d) without reasonable excuse cause or permit a vessel to be moored in the harbour except at a mooring provided or licensed by the Board or at a quay, jetty or other work provided for the mooring of vessels;
- (e) without reasonable excuse cause or permit a vessel to be moored at a mooring provided under article 18 (power to lay moorings) or licensed under article 19 (licensing of moorings) which the person concerned is not entitled to use.

(2) Any person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

(4) Subject to paragraph (7), if any person commits an offence under paragraph (1)(d) or (1)(e) the Board 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 18 (power to lay moorings);
  - (ii) any unpaid licence fee payable under article 19 (licensing of moorings), and
  - (iii) the expenses of removal and disposal under this paragraph.

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

(6) If the proceeds of sale under paragraph (4)(b) are insufficient to allow the Board to recover all amounts permitted by paragraph (4)(c), or there is no sale of the vessel, the Board may recover the amounts referred to in paragraph (4)(c) net of any proceeds of sale from the owner as a debt.

(7) The Board must not exercise its power to remove a vessel under paragraph (4) 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.

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

### **Exemptions from ship, passenger and goods dues**

**21.—**(1) Except as may be agreed between the Board and the government department or person concerned the Board is not entitled to demand ship, passenger and goods 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 core duties;
- (e) Officers of the Department for Transport in the execution of their core duties.

### **Power of the Board to prosecute or defend legal proceedings**

22. Where the Board considers it conducive to the improvement, maintenance, operation, management or protection of the harbour undertaking, it may—

- (a) prosecute, defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them;
- (b) make representations in respect of the harbour undertaking at any public inquiry held under any enactment.

### **Harbour premises**

23.—(1) The extent of the harbour premises at the date of this Order are shown for illustrative purposes shaded purple on the harbour premises plan.

(2) In the event of any discrepancy between the description of the boundaries of the harbour premises and the boundaries shown on the harbour premises plan, the description prevails over the said plan.

(3) The Board must keep, and make available for inspection at the harbour office and on the harbour website, an illustrative plan.

(4) The Board 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.

(5) In this article “illustrative plan” means a plan showing, for illustrative purposes only, the harbour premises.

### **Notices**

24.—(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 Board 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<sup>(a)</sup> (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;
- (b) in any other case, their last known address at the time of service.

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(a) 1978 c. 30.

(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), 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 (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 harbour office and electronically on the harbour website for the period of its duration.

### **Saving for Trinity House**

**25.** Nothing in this Order prejudices or derogates any of the rights, duties or privileges of Trinity House.

### **Crown Rights**

**26.—**(1) Nothing in this Order—

- (a) prejudicially affects any estate, right, power, privilege, authority or exemption of the Crown;
- (b) authorises the Board 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 of 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 prior 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.

### **Amendment of the 1954 Act**

**27.—**(1) The 1954 Act is amended as follows.

(2) In section 4 (interpretation)—

- (a) for the definition of “the harbour” substitute—

““the harbour” means Dover Harbour the limits of which comprise—

- (a) the area below the level of mean high water springs tides landward of an imaginary line commencing at a point (51°06'41.3"N 1°19'40.5"E), then proceeding in a straight line in a north easterly direction to a point (51°06'47.1"N 1°19'47.4"E), then following the landward side of the southern breakwater to a point (51°07'12.0"N 1°20'36.6"E), then proceeding in a straight line in a northerly



direction a point (51°07'18.4"N 1°20'36.0"E), then following the seaward side of the Eastern Arm to a point (51°07'48.8"N 1°20'33.4"E), the proceeding in a straight line in a north easterly direction to a point (51°07'54.1"N 1°20'50.9"E), then proceeding in a straight line in a northerly direction to a point (51°07'57.72"N 1°20'49.76"E) on the level of high water, shown for illustrative purposes shaded blue on the harbour limits plan being the harbour limits plan defined as such by article 2 of the Dover Harbour Revision Order 202[ ]; and

- (b) to the extent they lie outside the area in paragraph (a), the harbour premises as defined in article 2 of the Dover Harbour Revision Order 202[ ];
  - (b) for the definition of “vessel” substitute the definition of “vessel” in article 2 of this Order.
- (3) In section 43 (control of seashore and promenade)—
- (a) in subsection (2)(b) for “boats” substitute “vessels”;
  - (b) in subsection (2)(c) for “boats” substitute “vessels”.

#### **Amendment of the 1969 Order**

**28.**—(1) The 1969 Order is amended as follows.

(2) In article 2 (interpretation) for the definition of “vessel” substitute the definition of “vessel” in article 2 of this Order.

#### **Amendment of the 2006 Order**

**29.**—(1) The 2006 Order is amended as follows.

- (2) In article 2 (interpretation)—
- (a) in the appropriate places in alphabetical order insert the following definitions in article 2 of this Order—
    - (i) “harbour master”, and
    - (ii) “vessel”,
  - (b) in the definition of “the port police area” for “.” substitute “;”.
- (3) In article 20 (charges)—
- (a) after “in respect of” insert “any dracone or floating dock, crane, rig, drilling rig, or floating platform, a chain ferry or any other vessel or”;
  - (b) after “such charges” insert “, including in relation to any goods or passengers carried,”.
- (4) In article 26 (powers of harbour master) after paragraph (5) insert—
- “(6) A person who fails to comply with a general direction made under paragraphs (1) and (2) or a special direction made under paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In any proceedings for an offence under paragraph (6) it is 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.”.

#### **Amendment of the 2012 Order**

**30.**—(1) The 2012 Order is amended as follows.

(2) In article 2 (interpretation) in the appropriate place in alphabetical order insert the definition of “vessel” in article 2 of this Order.

**Revocation / Repeal**

**31.** The enactments mentioned in the first and second columns of the Schedule (revocation / repeal) are revoked or repealed (as appropriate) to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

*Michelle Willis*

Acting Chief Executive Officer

Date

An authorised employee of the Marine Management Organisation

## SCHEDULES

### SCHEDULE

Article 31

#### REVOCATION / REPEAL

**Table 1**

<i>Number</i>	<i>Short Title</i>	<i>Extent of Revocation/Repeal</i>
2 & 3 Eliz. 2. Ch. iv.	Dover Harbour Consolidation Act 1954.	Sections 9, 64, 73, 118(2) and 121.
S.I. 1969 No. 1578.	Dover Harbour Revision Order 1969.	Articles 4 and 6(2).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, made on the application of the Dover Harbour Board, amends the statutory harbour powers which apply in relation to the harbour of Dover and provides for—

(1) The updated constitution (articles 4 and 5) and general functions (article 6) of the Board as the statutory harbour authority for the harbour of Dover.

(2) Powers of general direction and special direction on the Board and the harbour master (defined in article 2) for the regulation and management of the harbour (articles 7 to 10).

(3) This Order creates an offence of failing to comply with special directions or general directions, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 11). A defence of due diligence is available to a person charged under article 11.

(4) Provisions for the enforcement of special directions (article 12), clarifying the master's responsibility in relation to directions (article 13), the boarding of vessels and vehicles (article 14) and savings for existing directions and byelaws (article 15).

(5) Power to dredge the harbour (article 16), powers with respect to disposal of wrecks (article 17), provisions relating to moorings (articles 18 to 20), exemptions from ship, passenger and goods dues (article 21), the power of the Board to prosecute or defend legal proceedings (article 22) and provisions relating to harbour premises (article 23).

(6) Provisions as to notices (article 24), savings for Trinity House (article 25) and Crown Rights (article 26).

(7) To facilitate that above, the Order repeals and revokes the Acts and Orders set out in the Schedule (revocation / repeal) and amends the 1954 Act, the 1969 Order, the 2006 Order and the 2012 Order as set out in articles 27 to 30.

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](http://www.legislation.gov.uk)