

2012 No. 3080

HARBOURS, DOCKS, PIERS AND FERRIES

The Cowes Harbour Revision Order 2012

Made - - - - - *10th December 2012*

Laid before Parliament *13th December 2012*

Coming into force - - - *7th January 2013*

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The Cowes Harbour Commissioners have applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) for a harbour revision order under section 14.

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), makes the following Order.

PART 1
PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Cowes Harbour Revision Order 2012 and shall come into force on 7th January 2013.

(2) The Cowes Harbour Acts and Orders 1897 to 2001 and this Order may be cited together as the Cowes Harbour Acts and Orders 1897 to 2012.

Interpretation

2. In this Order—

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

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- (a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2 to 4(1) and 14 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, 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), Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), Schedule 21, paragraph 3(2).
- (b) S.I. 2010/674.
- (c) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), Schedule 21, paragraph 3(1).
- (d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
- (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.
- (f) 1847 c.27.

“the 1897 Act” means the Cowes Harbour Act 1897^(a);

“the 1931 Order” means the Cowes Harbour Order 1931^(b);

“the 1936 Order” means the Cowes Harbour Order 1936^(c);

“the 2001 Order” means the Cowes Harbour (Constitution) Revision Order 2001^(d);

“the Commissioners” means the Cowes Harbour Commissioners under the Cowes Harbour Acts and Orders 1897 to 2012;

“general direction” means a direction under article 11;

“the harbour” means Cowes Harbour as comprised within the harbour limits;

“the harbour limits” means the limits of the harbour specified in article 3;

“the harbour master” means the 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 harbour master;

“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 the harbour;

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

“jet bike” means any watercraft propelled by a water-jet engine or other mechanical means of propulsion and steered —

(a) by means of a handlebar operated linkage system (with or without a rudder at the stern);
or

(b) by the person riding the craft using his body weight for the purpose; or

(c) by a combination of the methods referred to in (a) and (b);

“special direction” means a direction under article 14;

“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, a jet bike, seaplane 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; and

“WGS 84” means the World Geodetic System, revised in 1984 and further revised in 2004.

The harbour limits

3.—(1) The limits of the harbour within which the Commissioners exercise jurisdiction as a harbour authority and the powers of the harbour master are exercisable are—

- (a) the limits of the area within a line drawn from a parish boundary marker at 50 degrees 44.022N 01 degrees 16.862W by the north side of a public house called “The Folly” (on the eastern bank of the river Medina), thence on a bearing of 272 degrees to the western bank of that river to a position at 50 degrees 44.025N 01 degrees 17.112W, thence along the line of the high water mark down the western bank of the river Medina and along the harbour to Cowes Castle, thence following the line of the high water mark along the coast to a position in the vicinity of Egypt Point at 50 degrees 46.033N 01 degrees 18.837W, thence to a position in the vicinity of the north west limit of the Cowes Fairway at 50 degrees 46.312N 01 degrees 18.102W, thence to a position in the vicinity of Prince Consort Buoy at 50 degrees 46.413N 01 degrees 17.557W, thence to a position 50

(a) 1897 c.cclviii.

(b) Confirmed by the Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act, 1931 c.lxxxix.

(c) Confirmed by the Pier and Harbour Order (Cowes) Confirmation Act, 1936 c.lxxx.

(d) S.I. 2001/2183; see article 4 for the constitution of the Cowes Harbour Commissioners.

degrees 46.147 N 01 degrees 16.557 W, thence in a southerly direction to the shore in the vicinity of Old Castle Point at 50 degrees 45.970N 01 degrees 16.557W and thence along the line of the high water mark on the eastern bank of the river Medina to a parish boundary marker at 50 degrees 44. 022N 01 degrees 16.862W by the north side of a public house called “The Folly” (all coordinates in degrees, minutes and decimals of minutes and based on WGS 84 datum); and include—

(b) the extent of those parts of the harbour premises not within that area.

(2) Article 6 (limits of harbour and roads) of the 1931 Order is revoked.

PART 2 CHARGES

Charges for services and facilities

4. In addition to their power to demand ship, passenger and goods dues under section 26 (discretion of harbour authorities as to ship, passenger and goods dues) of the Harbours Act 1964, the Commissioners may demand, take and recover such reasonable charges for services and facilities requested by any party and provided by or on behalf of the Commissioners at the harbour as they may from time to time determine.

Payment of charges

5.—(1) The charges which the Commissioners are authorised to demand, take and recover in respect of vessels and goods under article 4 or any other enactment shall be payable before the removal from the harbour of any vessel or goods in respect of which they are payable, and may be demanded, taken and recovered by such persons, at such places, at such times and under such terms and conditions as the Commissioners may from time to time specify in their published list of charges.

(2) Charges payable to the Commissioners—

(a) in respect of a vessel, shall be payable by the owner or master of the vessel; and

(b) in respect of goods, shall be payable by the owner, consignee or shipper of the goods.

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

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

Deposit for charges

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

(2) Where such a person fails to deposit or guarantee the sum of money required the Commissioners may detain at the harbour the vessel or goods in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge has been paid.

Liens for charges

7.—(1) A person who by agreement with the Commissioners collects charges on their behalf and who pays, or gives security for the payment of, charges in respect of goods in his possession shall have a lien on those goods for the amount paid or security given in respect of the goods.

(2) An operator of a wharf or quay or carrier who is not himself liable for the payment of charges may pay, or by agreement with the Commissioners give security for the payment of, charges in respect of goods in his custody, and in that event he shall have a like lien on the goods for the amount paid or security given in respect of the goods as he would have in respect of his charges for safe custody or, as the case may be, carriage of the goods.

Refusal to pay charges for landing place

8. The harbour master may prevent a vessel from using a landing place provided by the Commissioners, if the master of the vessel refuses to pay the charges for such use.

Recovery of charges

9. In addition to any other remedy given by this Order and by the 1847 Act as incorporated in the Cowes Harbour Acts and Orders 1897 to 2012 the Commissioners may recover any charges payable to them as a debt in any court of competent jurisdiction (including in a case where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay the same or any part thereof, whether or not the Commissioners' collector has gone on board the vessel and demanded the charge pursuant to section 44 (recovery of tonnage rates by distraint of ship and tackle) of the 1847 Act).

Harbour master may prevent sailing of vessels

10. The harbour master may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to him of the payment of any charges payable in respect of the vessel or of passengers thereon or of the goods imported or exported therein.

PART 3

HARBOUR REGULATION

General directions as to use of the harbour, etc.

11.—(1) The Commissioners may, in accordance with the requirements of article 12, give or amend directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora and fauna in the harbour.

(2) A direction under this article may, as designated in the direction, apply—

- (a) to all vessels or a class of vessels; or
- (b) all persons or a class of persons; or
- (c) to the whole of the harbour or to a part; or
- (d) at all times or at certain times or at certain states of the tide,

and every direction under this article must specify the extent of its application in relation to the matters referred to in subparagraphs (a), (b), (c) and (d).

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

Procedure for giving, amending or revoking general directions

12.—(1) Subject to paragraph (7), if the Commissioners propose to give, amend or revoke a general direction, they must—

- (a) give notice in writing of the proposal to all member organisations of the advisory committee, the Chamber of Shipping and the Royal Yachting Association and to such other persons as they consider appropriate in respect of the proposal (in this article called “the designated consultees”);
- (b) consult with the designated consultees upon the proposal, including allowing a period of not less than 6 weeks from the date notice has been given by the Commissioners to those consultees for each of them to make written representations to the Commissioners on the proposal;
- (c) have regard to any representations made by the designated consultees during that consultation;
- (d) give notice in writing to the designated consultees, following the consultation, as to whether the Commissioners propose to proceed with the proposal and, if so, specifying whether they are making any modifications to the proposal and their reasons for so doing; and
- (e) if the Commissioners propose to proceed with the proposal and any of the designated consultees has made representations against the proposal, invite each designated consultee who has made such representations, within 28 days from the date of the notice given to him under sub-paragraph (d) or such longer period as may be specified in that notice, to confirm in writing if he maintains an objection to the proposal.

(2) Where the Commissioners have complied with the requirements of paragraph (1) in relation to the proposal, they may proceed with the proposal if—

- (a) none of the designated consultees have made representations against it; or
- (b) none of the designated consultees, having made representations against it, give notice to the Commissioners under paragraph (1)(e) maintaining an objection to the proposal; or
- (c) an objection to the proposal has been maintained but the requirements specified in paragraph (3) have been complied with.

(3) Where a designated consultee has given notice to the Commissioners under paragraph (1)(e) that he maintains an objection to the proposal—

- (a) the issue must be referred to an independent person (“the adjudicator”) to be agreed between the parties to the reference, that is between the Commissioners and each of the designated consultees maintaining an objection to the proposal (“the parties”) or, failing agreement, appointed, on the application of the Commissioners or any such designated consultee, by the President of the London Maritime Arbitrators Association;
- (b) the adjudicator must, so far as is reasonably practicable within three months of the referral, first provide a reasonable opportunity for each of the parties to make representations to or be heard by the adjudicator and then he must make a report in writing to the Commissioners with findings and reasoned recommendations on the issue, a copy of which must also be provided by the adjudicator to the each of the other parties; and
- (c) the Commissioners must decide whether to exercise the power to give, amend or revoke the direction having regard to the report and recommendations contained in the report of the adjudicator (but shall not be bound to give effect to the recommendations) and, once they have so decided, they must give notice in writing to the designated consultees of their decision and of the reasons for that decision.

(4) If the Commissioners wish to exercise the power to give or amend a direction in a form materially different from both the form notified to the designated consultees under paragraph (1)(d) and that recommended by the adjudicator under paragraph (3)(b), they must proceed, unless the designated consultees otherwise agree in writing, as if the proposal is a new proposal to which paragraph (1) applies.

(5) Except as provided in paragraph (3), an adjudicator appointed under that paragraph may determine the procedure for the making of representations and the conduct of any hearing under that paragraph.

(6) The costs incurred by the adjudicator and by each of the parties on any referral under paragraph (3) are to be paid by such one or more of the parties to the referral as the adjudicator may direct.

(7) Subject to paragraph (8), paragraphs (1) to (6) do not apply where the Commissioners propose in the interests of navigational safety to give, amend or revoke a direction under article 11—

- (a) in an emergency; or
- (b) for the purpose of making temporary provision for an intended activity or operation in the harbour which is expected to commence less than 4 months after the Commissioners are notified of, or otherwise becomes aware of, it and to last not more than 28 days and if the Commissioners consider it appropriate to make such provision, after taking into account other activities and operations in the harbour which may be affected by it.

(8) Where pursuant to paragraph (7) the Commissioners proceed to give, amend or revoke a direction without complying with paragraphs (1) to (6), they must—

- (a) give notice of the direction or amendment or revocation of the direction as soon as is practicable to those persons who would otherwise have been designated consultees had paragraph (1)(a) applied; and
- (b) if the Commissioners propose that—
 - (i) the direction or the amendment of a direction is to continue in force after the expiry of the period of three months from the date of that notice; or
 - (ii) in the case of the revocation of a direction, the revoked direction is not to be given again after the expiry of that period,

apply procedures analogous to those specified in paragraphs (1)(b) to (e) and (2) to (6) to the proposal.

(9) In paragraph (1)(a) “the advisory committee” means the Commissioners’ Advisory Committee, appointed by the Commissioners in accordance with article 17 (advisory bodies) of the 2001 Order.

Publication of general directions

13.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction must, except in an emergency, be published by the Commissioners once, as soon as practicable, in a newspaper circulating in the locality of the harbour and must state a place at which copies of the direction, amendment or revocation may be inspected.

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Commissioners to be appropriate.

Special directions as to use of the harbour, etc.

14.—(1) The harbour master may give a direction for any of the purposes in subparagraphs (a) to (i) applying to a vessel within the harbour limits or for any of the purposes in subparagraph (a) applying to all vessels or vessels of a particular class within the harbour limits or to persons within the harbour limits specified in the direction—

- (a) requiring compliance with a requirement made in or under—
 - (i) a general direction;
 - (ii) any provision of the Cowes Harbour Acts and Orders 1897 to 2012; or
 - (iii) any byelaw or other local enactment applying 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;
 - (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; or
 - (v) its removal is considered by the harbour master to be necessary in order to ensure the safety of persons or the protection of property, flora or fauna in the harbour or of any part of the harbour referred to in paragraph (2);
- (d) 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;
- (e) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (f) regulating the speed of the vessel;
- (g) regulating the use of the motive power of the vessel;
- (h) prohibiting or restricting the use of fires or lights; or
- (i) as to the discharge or use of ballast.

(2) A direction under this article may be given in the interests of the conservation of any part of the harbour where that part 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.

(3) A direction under this article may be given in any manner considered by the harbour master to be appropriate and must be addressed to the master where the direction applies to a vessel or vessels.

(4) Where a direction under this article is given to a person or persons the harbour master must, whenever possible, specify the person or persons to whom the direction is addressed, either by name or by a description sufficient to enable the person or persons in question to be readily identified.

(5) The harbour master may revoke or amend a direction given under this article.

Failure to comply with directions

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

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

Enforcement of special directions

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

(2) If there is no one on board a vessel to attend to 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 Commissioners in the exercise of the powers conferred by paragraph (1) shall be recoverable by them as if they were a charge of the Commissioners in respect of the vessel.

Master's responsibility in relation to directions

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

PART 4

MISCELLANEOUS AND GENERAL

Harbour services and facilities

18.—(1) The Commissioners shall have power to provide, maintain, operate and improve such harbour services and facilities in, or in the vicinity of, the harbour as they may consider necessary or desirable and to take such action as they consider incidental to the provision of such services and facilities.

(2) No provision of the Cowes Harbour Acts and Orders 1897 to 2012 shall prejudice or derogate from the generality of paragraph (1).

Service of notices and other documents

19.—(1) Without prejudice to the discretion of the harbour master under article 14(3) and subject to the following provisions of this article, a notice or other document to be served for the purposes of this Order, must be in writing and may be served by post.

(2) Where the person on whom a notice or other document is to be served for the purposes of this Order is a body corporate, the notice or other 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 he is no longer willing to receive notices or other documents by email or by other electronic means.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or other document under paragraph (1) is, if he 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, his last known address at the time of service.

(5) Where for the purposes of this Order a notice or other document is to be served on a person whose name and address cannot be ascertained after reasonable inquiry—

- (a) in the case of a notice or other document to be served on any person as having an interest in, or as the occupier of, any land, it may be served by—
 - (i) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

(a) 1978 c.30.

- (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 other document relating to a vessel (including a wreck), it may be handed to a member of the crew or 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 other document in this manner, or if the notice or other document would not be likely to be seen if it were so exhibited; and
 - (c) in the case of any other notice or other document or a notice or other document that is not capable of being served pursuant to paragraph (5)(b) it may be served by displaying it at the office of the harbour master while it is in force.
- (6) This article shall not be taken to exclude the employment of service by any other means.

Power to grant tenancies and to dispose of land

20.—(1) The Commissioners may, for the purposes of, or in connection with, the management of the harbour, lease or grant the use or occupation of, or any right or interest in or over, any lands, works, buildings, machinery, equipment or other property forming part of the harbour undertaking for such period, at such rents and other considerations and on such terms and conditions as may be agreed between the Commissioners and the person taking the same.

(2) The Commissioners may also dispose of, or grant the use or occupation of, any property vested in them and held by them for the purposes of the harbour which is no longer required for those purposes.

Commercial activities

21. If it conduces to the efficient and economical performance by the Commissioners of the management of the harbour they may—

- (a) carry on a trade or business of any kind including a trade or business carried on in conjunction with another person; or
- (b) form, invest in and promote, or join with another person in forming, investing in and promoting, a company for investing in, using or developing for any purpose land, or for carrying on any trade or business of any kind, in the harbour.

Liability for safety of goods

22. The Commissioners shall not be responsible for the safe keeping of goods deposited in any part of the harbour premises not specifically set apart by the Commissioners for the purpose of warehousing.

Removal of goods

23.—(1) If any goods are left on or in any part of the harbour premises the Commissioners may require the owner of the goods to remove them; and if the goods are not removed within six hours after such requirement or, in any case where it is not reasonably practicable to identify or contact the owner of the goods, within six hours after leaving a notice on the goods requiring their removal, the Commissioners may cause them to be removed to their own or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) When goods are so removed and placed in store on behalf of the Commissioners, they shall be subject to a lien for the expenses of, and incidental to, the removal, and for any charges payable to the Commissioners by the owner in respect of the goods.

(3) The Commissioners may, if they think fit, after giving seven days' notice to the owner of the goods when the owner can be identified and contacted, and must, if so required by the owner of the goods, sell or otherwise dispose of the goods in such manner as they think fit and reimburse

themselves out of the proceeds of sale, and the Commissioners must hold any surplus of such proceeds on trust for the person entitled thereto.

(4) In this article “goods” includes vehicles and equipment.

Removal of vehicles and boats

24.—(1) If-

- (a) a vehicle or boat is left without the permission of the Commissioners—
 - (i) in any place where it is likely to obstruct or interfere with the use of the harbour premises; or
 - (ii) in any part of the harbour premises where the parking of vehicles or boats is prohibited by notice erected by the Commissioners; or
- (b) it appears to the Commissioners that the vehicle or boat has been abandoned in any part of the harbour premises,

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

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

(3) Where the Commissioners in exercise of the powers of this article remove a vehicle or boat or cause it to be removed, they must as soon as practicable report that fact to a constable or to a police station and the expenses of, and incidental to, the removal of the vehicle or boat shall be recoverable from the person responsible.

(4) For the purposes of paragraph (3) “the person responsible” means—

- (a) the keeper of the vehicle or the owner of the boat at the time when it was put in the place from which it was removed under paragraph (1), or
- (b) if he shows that he was not concerned in, and did not know of, its being put there, the person who put the vehicle or boat in that place.

(5) If the Commissioners in exercise of the powers of this article remove a vehicle or boat to a place not readily visible from the place whence it is so removed they must, if and as soon as it is reasonably practicable to do so, send to the keeper of the vehicle at his last known address, his registered address or the address where the vehicle is ordinarily kept or, as the case may be, to the owner of the boat at his last known address or the address where the boat is ordinarily kept, notice that they have exercised the powers of this article and of the place to which the vehicle or the boat has been removed.

(6) The Commissioners may, if they think fit, after giving seven days notice to the keeper of the vehicle or, as the case may be, the owner of the boat when the keeper or the owner can be identified and contacted, sell or otherwise dispose of the vehicle or boat in such manner as they think fit and reimburse themselves out of the proceeds of sale, and the Commissioners must hold any surplus of such proceeds on trust for the person entitled thereto.

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

(8) In this article references to the keeper of the vehicle and his registered address are to the person for the time being registered as the keeper of the vehicle and his address recorded in the register in accordance with regulations under the Vehicle Excise and Registration Act 1994(a)

Obstruction of officers

25.—(1) Any person who—

(a) 1994 c.22.

- (a) intentionally obstructs an officer of the Commissioners acting in pursuance of any provision of the Cowes Harbour Acts and Orders 1897 to 2012; or
- (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 which he may require for the purpose of the performance of his 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 information to such an officer, makes a statement which he 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.

Borrowing powers

26.—(1) Subject to paragraph (2), the Commissioners may from time to time borrow upon the security of their assets for the time being or of their revenues or both their assets and their revenues, by any methods they see fit—

- (a) such sums of money as they think necessary not exceeding a multiple of one and a quarter times the total assets less total liabilities of the Commissioners as shown by the most recent audited financial statements of the Commissioners; and
- (b) with the consent of the Secretary of State, such further sums of money as they may require.

(2) In calculating the aggregate sums of money borrowed by the Commissioners under paragraph (1), there shall be excluded any sums borrowed for the purpose of repaying within twelve months of the date of borrowing any sums for the time being outstanding by way of principal on any amount previously borrowed.

(3) Moneys borrowed by the Commissioners under this article must be applied only to purposes to which capital money is properly applicable.

(4) For the purposes of paragraph (3), but without prejudice to the generality of that paragraph, purposes to which capital money is properly applicable include—

- (a) the payment of any interest, falling due within five years immediately following the date of borrowing, on any sum of money borrowed by the Commissioners under this article; and
- (b) the repayment, within twelve months from the date of borrowing, of any sum for the time being outstanding by way of principal on any amount previously borrowed.

(5) Article 14 (borrowing powers) of the 2001 Order is revoked and in article 16(1) of that order for “articles 14 (1)(a) and 15” there shall be substituted “article 15”.

Revocation of byelaws

27.—(1) The Commissioners may from time to time make byelaws solely for the revocation of byelaws previously made under the 1897 Act, the 1931 Order or the 1936 Order in accordance with the procedure in this article rather than the procedure to which those previously made byelaws were subject.

(2) Byelaws made under this article must be made under the common seal of the Commissioners, and shall not have effect until the requirements of this article have been satisfied.

(3) Upon the byelaws having been made, notice of the same must be given in one or more local newspapers circulating in the area to which the byelaws apply.

(4) For at least one month after the making of byelaws, a copy of the byelaws must be deposited at the offices of the Commissioners and must at all reasonable hours be available for public inspection without payment.

(5) The Commissioners must have regard to all representations received during the period when the byelaws have been made available for public consultation, in order to decide whether to confirm the byelaws, with or without amendments, and may fix the date on which the byelaws are due to come into operation and if no date is so fixed the byelaws shall come into operation one month from the date of their confirmation.

(6) A copy of the byelaws, when confirmed by the Commissioners, must be printed and deposited at the offices of the Commissioners, and must at all reasonable hours be available for public inspection without payment.

Crown rights

28.—(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

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

Signed by authority of the Marine Management Organisation

10th December 2012

J Cross
Chief Executive Office
An authorised employee of the Marine Management Organisation

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the limits of Cowes Harbour (article 3) in place of the limits in article 6 of the Cowes Harbour Order 1931 (confirmed by the Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act, 1931 (c.lxxxix).

The Order also confers further powers on the Cowes Harbour Commissioners and their harbour master in respect of charges for services and facilities (Part 2), general and special directions for the regulation of the harbour (Part 3), harbour services and facilities (article 18), the granting of tenancies and the disposal of land (article 20), commercial activities (article 21), the removal of goods, vehicles and boats (articles 23 and 24), borrowing (article 26) and the revocation of byelaws (article 27).

A full impact assessment has not been produced for this instrument as the Marine Management Organisation considers the impact on business or the private or voluntary sectors to be minor.

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STATUTORY INSTRUMENTS

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