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STATUTORY INSTRUMENTS

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**2017 No. 601**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**The Folkestone Harbour Revision Order 2017**

<i>Made</i>	- - - -	<i>24th April 2017</i>
<i>Laid before Parliament</i>		<i>28th April 2017</i>
<i>Coming into force</i>	- -	<i>1st August 2017</i>

Folkestone Harbour Company Limited has applied in accordance with section 14(2)(a) 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) under section 42A of the Act(3) delegated the functions of the appropriate Minister under section 14(4) to the Marine Management Organisation(5).

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

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Folkestone Harbour Revision Order 2017 and shall come into force on 1st August 2017.

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- (1) 1964 c. 40; section 14 was amended by the Transport Act 1981 (c. 56), section 18 and Schedule 6, paragraphs 2 to 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, 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).
- (2) 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.

## Interpretation

### 2.—(1) In this Order—

“the 1991 Order” means the Sealink (Transfer of Folkestone Harbour) Harbour Revision Order 1991(6);

“the Act of 1807” means the Act for constructing a pier and harbour at or near the town of Folkestone in the County of Kent enacted on 25th July 1807(7);

“the Act of 1818” means the Act for altering and amending the Act of 1807, and for other purposes, enacted on 19 March 1818(8);

“the Act of 1844” means the Act to enable the South-eastern Railway Company to complete and maintain a branch railway and approach to the Harbour of Folkestone, and for other purposes, enacted on 4th July 1844(9);

“the Act of 1847” means the Harbours, Docks and Piers Clauses Act 1847(10);

“the Act of 1885” means the South Eastern Railway (Various Powers) Act 1885(11);

“the Act of 1992” means the Folkestone Harbour Act 1992(12);

“the area of works” means the area within the limits of deviation and the revetment working area and the parts of the Inner Harbour and the Outer Harbour in the immediate vicinity of buildings being constructed in accordance with article 4(4);

“the Company” means Folkestone Harbour Company Limited which is registered in England and Wales with the number 02447559;

“the deposited plans”, “the deposited sections” and “the deposited map” mean respectively the plans, sections and map (numbered sheets HRO1 to HR05) prepared in duplicate, each signed on behalf of the Marine Management Organisation and marked “Folkestone Harbour Revision Order 2017 Plans, Sections and Map”, one copy of which is deposited at the offices of the Marine Management Organisation and the other at the office of the Company at Port Office, Folkestone Harbour, Kent CT20 1QH;

“general direction” means a direction given or proposed to be given under article 27;

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

“the harbour arm” means the pier projecting into the sea in a south-easterly and easterly direction from the south-eastern end of South Quay and on which stands a lighthouse at its tip;

“the harbour limits” means the limits of the harbour specified in article 20;

“the harbour limits map” means the deposited map numbered sheet HR05 and titled “Harbour Limits Map”;

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

“harbour premises” has the meaning given by article 20(5);

“high water” means mean high water spring tides;

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

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(6) [S.I. 1991/237](#).

(7) 47 Geo.III c.ii.

(8) 58 Geo. III c.xxi.

(9) 7 & 8 Vict. c.lxix.

(10) [1847 c.27](#).

(11) 1885 c.cxxxvii.

(12) [1992 c.6](#).

“the limits of deviation” means the limits of deviation for the works shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” shall be construed accordingly;

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

“owner” in relation to any vessel, includes any part-owner, any charterer (including but not limited to a charterer by demise) or any mortgagee in possession of the vessel;

“personal watercraft” means any watercraft (not being a structure which by reason of its concave shape provides buoyancy for the carriage of persons or goods) propelled by a 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 body weight for the purpose; or

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

“the revetment working area” means the area labelled “Revetment working area and temporary rock storage” on sheet HR02 of the deposited plans;

“special direction” means a direction under article 30;

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“the undertaking” means the undertaking of the Company at the harbour as authorised from time to time;

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

“the works” means the works authorised by this Order or, as the case may require, any of, or any part of, those works.

(2) All situations, distances, points, coordinates, directions, areas, lengths, dimensions or other measurements stated in this Order (other than the limits of deviation) shall be construed as if the words “or thereabouts” were inserted after each such situation, distance, point, coordinate, direction, area, length, dimension or other measurement and distances between points on a work shall be taken to be measured along that work.

(3) Coordinates specified in this Order are in degrees, minutes and decimals of minutes and shall be construed as references to WGS84 coordinates.

(4) In paragraph (3) “WGS84” means the World Geodetic System, revised in 1984 and further revised in 2004.

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

3.—(1) The Act of 1847 (except sections 6 to 25, 28, 31, the proviso to section 32, 48 to 50, 67, 77, 81, 82, 86 to 90, 97 to 103 and so much of the proviso to section 83 as follows the words “the special Act”), so far as applicable to the purposes, and not inconsistent with, the provisions of this Order, is incorporated with, and forms part of this Order subject to the modifications stated in paragraphs (2) to (6).

(2) Section 33 shall not apply to the harbour arm, the work authorised by article 4, or South Quay except so much of its northern face as faces those parts of the harbour to the west of East Pier and the north of South Quay known as the Inner Harbour and the Outer Harbour.

(3) Section 63 shall have effect subject to the modification that for the words from “liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(4) Section 69 shall have effect subject to the modification that for the words from “shall forfeit” to the end of the section there are substituted the words “shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(5) Section 85 shall have the effect as if for the words from “in the prescribed manner” to the end of the section there were substituted the words “by the Secretary of State”.

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

- (a) the expression “the special Act” means this Order, the expression “the undertakers” means the Company and the expression “the harbour, dock, or pier” shall mean the harbour;
- (b) the expression “limits” and “the prescribed limits” mean the harbour limits;
- (c) for the definition of the word “vessel” in section 3 of the Act of 1847 there shall be substituted the definition of that word in article 2 (1) of this Order; and
- (d) the reference in section 53 of the Act of 1847 to notice of a direction by the harbour master served upon a vessel shall not be construed as requiring the notice to be in writing.

(7) The words “and the Harbours, Docks and Piers Clauses Act 1847” in section 2, and section 57, of the Act of 1885 and article 8(3) of the 1991 Order are revoked.

## PART 2

### WORKS

#### **Power to construct works**

4.—(1) Subject to the provisions of this Order, the Company or others acting on its behalf may, in the lines and situations and upon the lands delineated on the deposited plans and within the limits of deviation shown on those plans and according to the levels shown on the deposited sections, construct and maintain the works described as follows with all necessary works and conveniences connected with or incidental to them—

A concrete wave wall and retaining wall fronting South Quay to the north of the harbour arm commencing at 51°04.6780'N 01°11.3748'E and extending in a north north-easterly direction to 51°04.7395'N 01°11.3970'E and then along a curved path in a northerly direction around to a west south-westerly direction to 51°04.7430'N 01°11.3887'E, together with a rock revetment disposed about a crest line commencing at 51°04.6742'N 01°11.3779'E and extending in a north north-easterly direction to 51°04.7297'N 01°11.3980'E and then along a curved path in a northerly direction around to a west north-westerly direction to 51°04.7331'N 01°11.3949'E. The overall rock revetment extends 19 metres seaward of the crest to its toe and along most of its length extends five metres landward of its crest to the wave wall.

(2) The Company may, for the purposes of the works authorised by paragraph (1), demolish and remove any structures or apparatus lying within the limits of deviation and may by means of the works, enclose and reclaim so much of the bed of the sea and the foreshore as lies within the limits of deviation and may hold and use the same as part of the undertaking.

(3) Subject to the provisions of this Order, the Company may, within the limits of deviation, from time to time reconstruct, extend, enlarge, renew, alter, add to, replace or re-lay the works authorised

by paragraph (1) and may maintain the same as reconstructed, extended, enlarged, renewed, altered, added to, replaced or re-laid.

(4) The Company may construct or permit the construction of buildings on the western quay of the Inner Harbour extending above part of the Inner Harbour and on South Quay eastwards of reference point 51°04.7272'N 01°11.2844'E extending above part of the Outer Harbour.

#### **Power to make subsidiary and accommodation works**

5.—(1) Subject to the provisions of this Order, the Company may from time to time construct, lay down, place, remove, replace, work or use and maintain whether temporarily or permanently—

- (a) within the limits of deviation all such works, conveniences, appliances and apparatus and take such measures as it from time to time deems necessary or expedient for the purposes of or in connection with or incidental to the construction, maintenance and use of the works authorised by article 4; and
- (b) within the harbour such works for the accommodation or convenience of vessels as it thinks fit, including, without prejudice to the generality of the foregoing, pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buoys, bollards, navigation marks and lights.

(2) In the course of erecting, constructing, laying down, placing, removing and replacing the works the Company may carry out construction activity, including the temporary placing or storage of plant, equipment and rock, within the limits of deviation and the revetment working area.

#### **Period for commencement of works**

6.—(1) Subject to paragraph (2), if the works in article 4 are not substantially commenced within ten years from the coming into force of this Order or such extended time as the Secretary of State may on the application of the Company allow, then on the expiration of that period or such extended time (as the case may be) the powers granted by this Order to the Company for making and maintaining the works shall cease except as to so much thereof as is then substantially commenced.

(2) Nothing in paragraph (1) shall apply to works carried out under paragraph (3) of article 4 or article 5.

#### **Works to be within district of Shepway, etc.**

7.—(1) So much of the works as are beyond mean low water shall be deemed to be within

- (a) the district of Shepway;
- (b) the local justice area of East Kent; and
- (c) the Folkestone Harbour ward.

(2) During the period between the coming into force of this Order and the date when the works have been completed each of the areas mentioned in paragraph (1) above shall be deemed to include all lands beyond mean low water which are within the limits of deviation.

(3) Nothing in this article shall require the performance of any functions under the Ordnance Survey Act 1841(13) until the Company has certified in writing to the Director General of Ordnance Survey that the works have been completed.

(4) In paragraph (2) “mean low water” means the level of mean low water neap tides.

### **Power to deviate**

8. Subject to the provisions of this Order, in the construction of the works authorised by article 4(1), the Company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation, and may deviate vertically from the levels of the works as shown on the deposited sections to any extent not exceeding three metres upwards or to any extent downwards as may be found necessary or convenient.

### **Power to dredge**

9.—(1) The Company, for the purposes of constructing and maintaining the works and of affording access to the harbour or otherwise for the improvement of the harbour, may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed of the sea and foreshore of the harbour and approaches to the harbour.

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

(3) No such materials referred to in this article shall be laid down or deposited in any place below the level of high water otherwise than in such places and under such conditions and restrictions as may be approved of or prescribed by the Secretary of State.

### **Fine for obstructing works**

10. Any person who intentionally obstructs any person acting under the authority of the Company in setting out the lines of, or in constructing the works, or who interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, and shall in addition be liable to repay to the Company as a debt any expenses incurred by them in making good any damage resulting from such obstructions, interference, moving or removal.

### **Survey of tidal works**

11. The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expense incurred by him in such a survey and examination shall be recoverable from the Company as a debt.

### **Provision against danger to navigation**

12.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the Company must as soon as reasonably practicable notify Trinity House and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Company fails to notify Trinity House as required by this article, or to comply in any respect with a direction given under this article, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

13.—(1) Where a tidal work is abandoned, or has fallen into decay, the Secretary of State may by notice in writing require the Company at its own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works vested in the Company on or over land above the level of high water is abandoned or has fallen into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice given under this article.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company as a debt.

#### **Permanent lights on tidal works**

**14.—**(1) The Company must at the outer extremity of every tidal work exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Company fails without reasonable excuse to comply in any respect with a direction given under this article it shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Lights on tidal works during construction**

**15.—**(1) The Company must, at or near a tidal work during the whole time of its construction, reconstruction, alteration, replacement or re-laying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State may from time to time direct.

(2) If the Company fails to comply in any respect with a requirement of a direction given under this article it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **PART 3**

### **TEMPORARY CLOSURE OF HARBOUR**

#### **Temporary closure of area of works**

**16.—**(1) For the purpose of carrying out the works the Company may irrespective of anything in any enactment temporarily close the area of works to vessels at such places within the harbour as the Company may think appropriate.

(2) Irrespective of anything contained in this Order, the area of works must not be closed to vessels for a continuous period longer than two years.

#### **Notice of closure and removal of vessels from area of works**

**17.—**(1) Before exercising the power conferred on it by article 16 temporarily to close an area of works to vessels the Company must—

- (a) publish a notice of the intention to temporarily close part of the harbour in the London Gazette and once in each of two successive weeks in a local newspaper circulating in Shepway, with an interval between the dates of publication of not less than six clear days;
- (b) display a copy of the notice in a visible position in the harbour; and

- (c) notify the Secretary of State in writing of the Company's intention temporarily to close part of the harbour.
- (2) Each of the notices must—
  - (a) state that the Company intends temporarily to close the area of the works to vessels; and
  - (b) specify a date, which must be a date not earlier than one month after the date of the latest of the three publications, by which all vessels must be removed from the area of works.
- (3) If the master of a vessel within the area of works does not remove the vessel before the date specified under paragraph (2)(b) the harbour master may cause the vessel to be removed from the area of works and moored or laid in another place where it may without injury be moored or laid and any expenditure incurred by the Company in removing the vessel shall be recoverable from the master of the vessel as a debt.
- (4) The powers conferred on the harbour master and the Company by this article are in addition to and without prejudice to the powers relating to the removal of vessels conferred upon them by sections 64 and 65 of the Act of 1847.

#### **Vessels entering the area of works after date of closure**

**18.** If a vessel enters the area of works after the date specified under paragraph (2)(b) of article 17, during the period of temporary closure the harbour master may direct the master of the vessel immediately to remove the vessel from the area of works, and if the master of the vessel does not immediately comply with the directions the provisions of paragraph (3) and (4) of article 17 shall apply to and in respect of the vessel as if the vessel had been within the area of works before the date specified under paragraph (2)(b) of article 17.

## **PART 4**

### **MANAGEMENT AND REGULATION OF HARBOUR**

#### **General powers in respect of harbour**

**19.**—(1) The Company may, subject to the provisions of this Order, take such steps as it considers necessary or desirable for the improvement, maintenance and management of the harbour and the facilities afforded therein or in connection therewith.

(2) For those purposes, and without prejudice to the generality of paragraph (1), the Company may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide services and facilities therein;
  - (b) subject to obtaining the necessary rights in or over land—
    - (i) execute and place in and over the harbour such structures, works and equipment as are required; and
    - (ii) maintain, renew, alter, extend, demolish and reconstruct structures, works and equipment in the harbour (including those executed or placed pursuant to subparagraph (i) above;
  - (c) nourish, replenish and otherwise alter the levels of beaches or improve the foreshore; and
  - (d) do all other things which in its opinion are expedient to facilitate the proper carrying on or development of the undertaking.
- (3) No other provision of the Folkestone Harbour Acts and Orders 1807 to 2017 shall prejudice or derogate from the generality of this article.



(4) In paragraph (3) “the Folkestone Harbour Acts and Order 1807 to 2017” means the Act of 1807, the Act of 1818, the Act of 1844, the Act of 1885, the 1991 Order, the Act of 1992 and this Order.

### **Limits of harbour**

**20.**—(1) The limits of the harbour within which the Company exercises jurisdiction as a harbour authority and the harbour master exercises his powers are—

- (a) the area described in the Schedule; and
- (b) so much of the harbour premises as is not situated within that area.

(2) The area described in paragraph (1)(a) is, for the purpose of identification only, shown edged red and coloured pink on the harbour limits map.

(3) Section 9 of the Act of 1885 has effect subject to this article.

(4) In the event of a discrepancy between the description of the boundaries of the harbour referred to in this article and the boundaries shown on the harbour limits map the descriptions of the boundaries shall prevail over the harbour limits map.

(5) In this article—

“harbour premises” means—

- (i) the piers, harbour walls, berths, jetties, slipways, landing platforms, wave walls, rock revetments and other works for the time being leased to or occupied by the Company as part of the harbour;
- (ii) so much of the land immediately to the north of the Inner Harbour and Outer Harbour as is within Land Registry title number K721157 and is for the time being leased to or occupied by the Company for the purposes of the harbour;
- (iii) the premises for the time being leased to or occupied by the Company for the purposes of the harbour master’s offices; and
- (iv) the part of South Quay north of an imaginary straight line drawn along the upper level northern face of the quay between the railway viaduct and north-eastern corner of the quay for the time being leased to or occupied by the Company for the purposes of the harbour; and

“the harbour limits map” has the meaning given by article 2(1).

### **As to use of harbour**

**21.**—(1) Notwithstanding anything in article 3 or in any other local enactment the Company may from time to time set apart and appropriate any part of the harbour for the exclusive, partial or preferential use and accommodation of any particular trade, activity, person, vessel or class of vessels, or goods, subject to the payment of such charges and subject to such terms, conditions and regulations as the Company thinks fit.

(2) No person or vessel shall, otherwise than in accordance with the terms, conditions and regulations of the setting apart or appropriation, make any use of any part of the harbour so set apart or appropriated without the consent of the harbour master or other duly authorised officer of the Company and—

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

(3) Nothing in this article shall authorise the prohibition of navigation within any part of the harbour, nor shall it authorise interference with any public right of way.

### **Removal of vehicles or vessels**

**22.**—(1) If a vehicle or vessel is left without the permission of the Company—

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

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

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

(3) Where the Company in exercise of the powers of this article removes a vehicle or vessel or causes it to be removed it must as soon as practicable report that fact to a constable or to a police station.

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

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

- (a) the owner of a vehicle or vessel at the time when it was left in the place from which it was removed under paragraph (1), unless the owner shows that the owner was not concerned in, and did not know of its being left there; or
- (b) any person by whom the vehicle or vessel was left in that place.

(6) If the Company in exercise of the powers of this article removes a vehicle to a place not readily visible from the place whence it is so removed, it must, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002<sup>(14)</sup> or any other regulations having the like effect for the time being in force, at his last known address, his registered address or the address where the vehicle is ordinarily kept, notice that it has exercised the powers of this article and of the place to which the vehicle has been removed.

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

### **Removal of obstructions other than vehicles or vessels**

**23.**—(1) Without prejudice to its powers under this Order or any other enactment, the Company may remove anything (other than a vehicle or vessel) but including a wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>(15)</sup>, in, or on land adjoining, the waters of the harbour or the approaches thereto—

- (a) which is causing, or likely to cause, an obstruction to, or interference with, navigation;
- (b) which is causing, or likely to cause, interference with the operation of any works of the Company, or damage to any such works or to any property; or
- (c) which is in the harbour without lawful authority;

and may take such steps as appear to it to be appropriate to prevent or minimise such obstruction, interference or damage.

(2) Where the Company—

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<sup>(14)</sup> S.I. 2002/2742.

<sup>(15)</sup> 1995 c.21.

(a) removes anything under paragraph (1); and  
(b) can readily identify its owner or a person whom it reasonably believes to be its owner;  
the Company must, within 28 days of its coming into its custody, give written notice to that person stating that, upon proof of ownership to the reasonable satisfaction of the Company, possession may be retaken at a place named in the notice within the period specified in the notice (being not less than 14 days after the notice is served) and, if possession of the thing removed is not so retaken, it shall at the end of that period vest in the Company.

(3) The Company may, at such time and in such manner as it thinks fit—

- (a) dispose of anything removed under paragraph (1) in the case of which paragraph (2) does not apply; or
- (b) notwithstanding paragraph (2), dispose of anything so removed which is of a perishable nature or the custody of which involves unreasonable expense or inconvenience.

(4) If anything disposed of by the Company under this article is sold, the Company may retain out of the proceeds of sale any expenses incurred by it under this article, and any surplus—

- (a) must be paid to any person who within three months from the time when the thing came into the custody of the Company proves, to the reasonable satisfaction of the Company, ownership thereof by that person at that time; or
- (b) if within the said period no person proves ownership in accordance with sub-paragraph (a) shall vest in the Company.

(5) If the proceeds of the sale of anything removed under this article are insufficient to reimburse the Company for the said expenses, or there is no sale, the Company may recover as a debt the deficiency, or, where there is no sale, the whole of the expenses, from the person who was the owner at the time when the thing removed came into the custody of the Company or who was the owner at the time of its abandonment or loss.

## **Byelaws**

**24.**—(1) The Company may from time to time make byelaws for the management and regulation of the harbour and, without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) for regulating the use, operation and superintendence of the harbour and the berths, pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities (including moorings) in the harbour;
- (b) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (c) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons within the harbour;
- (d) for regulating the conduct of all persons in the harbour, not being members of a police force or officers or servants of the Crown or members of a fire and rescue authority acting in pursuance of the Fire and Rescue Services Act 2004(16) whilst in the exercise of their duties as such;
- (e) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specifications of moorings in the harbour;
- (f) for preventing or removing obstructions or impediments within the harbour;
- (g) for regulating the launching of vessels with the harbour;

- (h) for regulating or prohibiting the mooring, berthing, careening, beaching, maintenance and repair or anchoring and presence and keeping of vessels in the harbour;
- (i) for regulating or preventing the use in the harbour or on board a vessel in the harbour of fires, lights or other equipment, tools or appliances which the Company considers involves a risk of fire and for the prevention of smoking;
- (j) for prohibiting or regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse or polluting liquid) and sewage from vessels in the harbour;
- (k) for prohibiting the use or regulating the movement, speed and parking of vehicles in the harbour;
- (l) for requiring the use of effectual silencers and the general control of noise on vessels in the harbour;
- (m) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
- (n) for regulating the embarkation of persons into, or their disembarkation from, vessels in the harbour;
- (o) for regulating the fuelling of vessels in the harbour;
- (p) for regulating the holding of regattas and other public events in the harbour;
- (q) for prescribing the lights and signals to be exhibited or made—
  - (i) by vessels aground in the harbour;
  - (ii) by vessels or devices used for marking obstructions in the harbour; or
  - (iii) for assisting the navigation of vessels in the harbour, at the entrance to a dock or at a wharf, pier or other work;
- (r) for the prevention of nuisances in the harbour;
- (s) for preventing or regulating the discharge by land or sea of any material or thing in the harbour or the approaches to it;
- (t) for regulating or preventing fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, or other installation or structure of any kind in the harbour, or from vessels in the harbour;
- (u) for regulating or preventing aquaplaning, parascending, water skiing or other recreational activities involving towing, surfing, or diving or other underwater activities in the harbour;
- (v) for regulating or preventing bathing, and for securing the protection of bathers, in the harbour;
- (w) for 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;
- (x) for regulating or prohibiting the carrying on of trading or commercial activities in the harbour;
- (y) for making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master;
- (z) for regulating the use in the harbour of yachts, sailing boats, rowing boats, pleasure craft, windsurfing boards, personal watercraft and other small vessels;
- (aa) for prohibiting or restricting the bringing of animals onto harbour premises and for regulating the control of animals in the harbour;

- (bb) for the conservation of flora and fauna in the harbour;
  - (cc) in relation to vessels other than pleasure vessels to impose requirements as to the standards of competence and experience required by persons navigating or working with the vessels, and requirements as to the number, competence and experience of their crew, and the standard of seaworthiness of the vessels;
  - (dd) for regulating the equipment of vessels and requiring vessels to carry specified equipment in the interests of safety;
  - (ee) for regulating or preventing the use by vehicles of the foreshore within the harbour;
  - (ff) for regulating the use of or requiring the registration of ferries, water taxis and passenger boats in the harbour and the conduct of boatmen, ferrymen and others plying for hire or engaged in navigating in the harbour and of persons resorting to any works constructed or operated by the Company; and
  - (gg) for regulating the exercise of the powers vested in the harbour master.
- (2) In this article “signals” includes sound signals.
- (3) Byelaws made under this article, under section 83 of the Act of 1847 and under or by virtue of the Act of 1807 or the Act of 1844, may—
- (a) provide for imposing upon persons offending against them, or against any condition, requirement or direction imposed, made or given under such byelaws, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the harbour or to any part of it;
  - (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles; or
  - (d) make different provision for different circumstances.
- (4) Byelaws under this article may authorise the imposition of reasonable charges by the Company for assessing standards of competence and experience and for issuing any relevant certificates and endorsements required by such byelaws.
- (5) In proceedings for an offence against byelaws made by the Company under this article, or section 83 of the Act of 1847 or under or by virtue of the Act of 1807 or the Act of 1844, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence.
- (6) The powers of this article are in addition to the powers conferred by section 83 of the Act of 1847 and under or by virtue of the Act of 1807 and the Act of 1844.
- (7) In paragraph (1)(z) “windsurfing board” means a board with a sail or sails designed to be operated by a person or persons standing upright on it.

### **Confirmation of byelaws**

**25.—**(1) Byelaws made by the Company under this Order or section 83 of the Act of 1847 or under or by virtue of the Act of 1807 or the Act of 1844 shall not come into operation until they have been confirmed by the Secretary of State.

(2) At least one month before an application for confirmation of byelaws is made by the Company to the Secretary of State notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws will be open to inspection must be published in one or more newspapers.

(3) Such notice must include reference to the right to make objection or representation referred to in paragraph (7).

(4) Not later than the first date on which the notice under paragraph (2) is published, the Company must send a copy of the notice to the Chief Executive Officer of Shepway District Council and to the Secretary of State.

(5) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws must be kept by the Company at the office of the harbour master and must at reasonable hours be open to public inspection without payment.

(6) The Company must supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge as determined by the Company.

(7) During the period of one month after completion of the publication of the notice required by paragraph (2), a person may make in writing to the Secretary of State an objection to or representation respecting the byelaws to which the notice relates.

(8) Subject to paragraph (9), the Secretary of State may confirm the byelaws in the form submitted to him, with such modifications as he thinks fit, or may refuse to confirm them.

(9) Where the Secretary of State proposes to make a modification that appears to him to be substantial, he must inform the Company and require it to take any steps the Secretary of State considers necessary for informing persons likely to be concerned with the modification, and the Secretary of State must not confirm the byelaws until such period has elapsed as the Secretary of State thinks reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

(10) A copy of the byelaws when confirmed must be printed and deposited by the Company at the office of the harbour master and must at all reasonable hours be open to public inspection without payment, and a copy of the byelaws must on application be furnished to any person on payment of such reasonable charge as the Company may determine.

### **Application of byelaws of the Company**

**26.** All byelaws, rules and regulations made in relation to the harbour for the time being in force shall apply to the works and within the harbour limits and may be enforced by the Company accordingly.

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

**27.—(1)** The Company may, in accordance with the requirements of article 28, give a direction for—

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

in the harbour.

(2) A direction under this article may apply—

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

and every direction must specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b), (c) and (d).

(3) The Company may, in accordance with the requirements of article 28, amend or revoke a direction given under paragraph (1).

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

**28.**—(1) Subject to paragraph (7), if the Company proposes to give, amend or revoke a general direction (“the proposal”), it must—

- (a) give notice in writing of the proposal to the Chamber of Shipping and the Royal Yachting Association and to such other persons or organisations as it considers appropriate for the purposes of the application of this provision (“designated consultees”);
- (b) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks from the date of the notice given in accordance with sub-paragraph (a) for written representations to be made by the designated consultees to the Company regarding the proposal;
- (c) have regard to any representations made by designated consultees during the consultation;
- (d) give notice in writing to the designated consultees following the consultation as to whether the Company 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
- (e) if the Company proposes to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days from the date of the notice given in accordance with sub-paragraph (d), or such longer periods as the Company may specify.

(2) Where the Company has complied with paragraph (1), it may proceed with the proposal if—

- (a) none of the designated consultees has made representations against the proposal;
- (b) none of the designated consultees which made representations against the proposal has confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(e); or
- (c) where at least one designated consultee has maintained an objection in accordance with paragraph (1)(e), the requirements of paragraph (3) have been complied with.

(3) Where at least one designated consultee has confirmed in writing to the Company that they maintain their objection to the proposal—

- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
  - (i) by agreement between the Company and each designated consultee maintaining an objection in accordance with paragraph (1)(e) (“the parties”); or
  - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties;
- (b) so far as is reasonably practicable within three months 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 Company must decide whether to proceed with the proposal having regard to the adjudicator’s report (but is not bound to give effect to any recommendations) and, once it has decided, must give notice in writing to the designated consultees 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 Company wishes to proceed with the proposal in a form materially different from both the form notified to the designated consultees under paragraph (1)(d) and (where paragraph (3) applies) the form recommended by the adjudicator under paragraph (3)(b), it must proceed, unless all the designated consultees agree in writing that it need not, as if the proposal were a new proposal to which paragraph (1) applies.

(7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety the Company proposes to give, amend or revoke a general direction applying to vessels or persons—

- (a) in an emergency; or
- (b) relating to an intended activity or operation within the harbour which—
  - (i) is expected to commence less than four months after the Company is notified or otherwise becomes aware of it;
  - (ii) is to last less than three months; and
  - (iii) the Company considers that the giving, amending or revocation of a general direction in relation to that activity or operation is required, taking into account other activities or operations in the harbour which may be affected.

(8) Where the Company proceeds to give, amend or revoke a general direction in accordance with paragraph (7), it must—

- (a) as soon as is practicable give notice of the direction, amendment or revocation 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 three months or the revoked direction is not intended to be restored within that period, apply the procedure under paragraphs (1)(b) to (e) and (2) to (6) to the direction, amendment or revocation with the following modifications—
  - (i) a reference in those paragraphs to the ‘proposal’ is to be read as a reference to the direction, amendment or revocation;
  - (ii) in paragraph (1)(b), for “sub-paragraph (a)” substitute “paragraph (8)(a)”; and
  - (iii) a reference in those paragraphs to the Company proceeding with a proposal is to be read as a reference to the Company determining that the direction or amendment should remain in force or the revoked direction should not be restored.

### **Publication of general directions**

**29.**—(1) Subject to paragraph (3), the Company must publish a notice of the giving, amendment or revocation of a general direction as soon as practicable on one occasion in a newspaper circulating in the locality of the harbour.

(2) The notice must state a place at which copies of the general direction as to be given, amended or revoked may be inspected.

(3) In an emergency, the Company may give notice of the giving, amendment or revocation of a general direction in any manner which they consider to be appropriate.

### **Special directions as to use of the harbour, etc.**

**30.**—(1) In addition to the directions which the harbour master may give under section 52 of the Act of 1847, the harbour master may give a direction which applies to a vessel in the harbour limits for one or more of the following purposes—

- (a) requiring compliance with a requirement made in or under—



- (i) a general direction;
  - (ii) a byelaw; or
  - (iii) a provision of any other enactment of local application to the harbour or to the Company;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of a vessel;
- (c) requiring the removal of a vessel from any part of the harbour 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 persons or vessels or the carrying on of business in the harbour;
  - (iv) it 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 and fauna or any part of the harbour referred to in paragraph (3);
- (d) regulating the loading, discharging, storing or safeguarding of the cargo, fuel, water or stores of a vessel and the discharge 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 a vessel;
- (g) regulating the use of the motive power of a vessel;
- (h) prohibiting or restricting the use of fires or lights; or
- (i) as to the discharge or use of ballast.
- (2) The harbour master may give a direction which applies to—
- (a) a person;
  - (b) all vessels; or
  - (c) all vessels of a particular class;
- within the harbour for one or more of the purposes in paragraph (1)(a).
- (3) A special direction may be given in the interests of the conservation of, or prevention of damage to, any part of the harbour where that part has been designated, or otherwise 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) A special direction may be served in a manner considered by the harbour master to be appropriate and, where it is in respect of a vessel, must be addressed to the master of the vessel.
- (5) Where a special direction is to be given which applies to a person, the harbour master must, where possible, specify a particular person to whom the direction is addressed, either by name or by a description sufficient to enable the person to be readily identified.
- (6) The harbour master may amend or revoke a special direction.

### **Failure to comply with directions**

**31.—(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**

**32.**—(1) Without prejudice to any other remedy available to the Company, if a special direction is not complied with within a reasonable time, the harbour master may, where practicable, 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 the vessel to attend to a special direction, the harbour master may proceed as if the direction had been given and not complied with.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Company from the owner of the vessel as if they were a charge of the Company in respect of the vessel.

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

**33.** 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 to which the direction applies in relation to that vessel, to persons on board the vessel, to the cargo or any other person or property.

#### **Obstruction of officers**

**34.**—(1) A person who—

- (a) intentionally obstructs an officer of the Company acting in pursuance of a provision of this Order or a statutory provision of local application applying to the harbour; 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) A 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.

#### **General rules for navigation**

**35.** A master who navigates a vessel in the harbour—

- (a) without due care and attention; or
- (b) in a manner liable to injure or endanger persons, other vessels, the banks of the harbour (whether above or below the level of high water) or any facility, structure or installation in or adjoining the harbour,

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

### **Vessels adrift**

**36.**—(1) The owner or master of a vessel adrift in the harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on his part.

### **Power to deal with unseaworthy vessels**

**37.**—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 and on the Company by the Merchant Shipping Act 1995 and by this Order the Company may remove, sell, destroy or otherwise dispose of a vessel laid by or neglected as unseaworthy in, or on land adjoining the water of the harbour.

(2) The Company may retain out of the proceeds of sale of such a vessel expenses incurred by them in respect of the vessel, or in marking, buoys, lighting or otherwise controlling the vessel or warning shipping of its presence and expenses incurred by the harbour master under section 57 of the Act of 1847 and must pay the surplus, if any, to the person entitled thereto.

(3) If the proceeds of sale are insufficient to reimburse the Company for the said expenses, or there is no sale, the Company may recover the deficiency, or, where there is no sale, the whole of the expenses, from the owner as a simple contract debt.

(4) Except in the case of emergency, the Company must, before exercising its powers under this article, give 28 clear days' notice in writing of its intention to do so to the owner of the vessel and by advertisement in each of three successive weeks in a local newspaper.

(5) If the owner or his place of business or abode is not known to the Company or cannot after diligent inquiry be found or is outside the United Kingdom, the notice may be given by displaying it at the harbour offices, Folkestone for the period its duration.

## **PART 5**

### **CHARGES**

#### **Charges for services and facilities**

**38.** In addition to its power to demand ship, passenger and goods dues under section 26 of the Harbours Act 1964, the Company may demand, take and recover such reasonable charges for services and facilities requested by any party and provided by or on behalf of the Company at the harbour as it may from time to time determine.

#### **Charges for services not otherwise provided for**

**39.** Subject to the provisions of this Order the Company may demand, take and recover such reasonable charges or other consideration as it may determine in respect of any services rendered by it in connection with the harbour.

#### **Payment of charges**

**40.**—(1) The charges which the Company is authorised to demand, take and recover in respect of vessels and goods under article 38 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 Company may from time to time specify in its published list of charges.

(2) Charges payable to the Company—

(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 Company may be recoverable by it 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 Company may specify may include the time when a charge falls due for payment and may require such information to be given to the Company by the owner or master of a vessel or person using a service or facility of the Company as the Company may require in connection with the assessment or collection of a charge.

### **Deposit for charges**

**41.**—(1) The Company may, if it thinks fit, require a person who incurs, or is about to incur, a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Company, 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 Company 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.

### **Refusal to pay charges for landing place**

**42.** An officer of the Company may prevent a vessel from using a landing place provided by the Company if the master of the vessel refuses to pay the charges for such use.

### **Recovery of charges**

**43.** In addition to any other remedy given by this Order or by the Act of 1847 as incorporated with this Order the Company may recover any charges payable to it 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 Company refuses or neglects to pay the same or any part thereof, whether or not an official or agent of the Company has gone on board the vessel and demanded the charge pursuant to section 44 of the Act of 1847).

### **Harbour master may prevent sailing of vessels**

**44.** The harbour master may prevent the removal or sailing from the harbour of a 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 6**

### **MISCELLANEOUS**

#### **Power to grant tenancies and to dispose of land**

**45.**—(1) The Company may grant licences, tenancies and leases for a term of land within the harbour so far as it considers desirable in the interests of efficient and economical management of the harbour.

(2) The Company may also dispose of any interest in land within the harbour which it considers to be surplus to that required by it for the purposes of the undertaking.

### **Development, etc. of land**

**46.**—(1) The Company may form and promote, or join with any other person in forming and promoting, a company for using or developing for any purpose, or carrying on any trade or business on, any of the harbour land.

(2) The Company may (alone or with others) develop land not required for the purposes of the undertaking with a view to disposing of the land or interests in it, and may acquire land by agreement for the purpose of developing it with such land.

### **Saving for Trinity House**

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

### **Defence of due diligence**

**48.**—(1) In proceedings for an offence under article 12, 14 or 15, it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided under paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

### **Crown rights**

**49.**—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the Company to take, use, enter upon or in any manner interfere with, any land or hereditaments or 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) 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
  - (ii) 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) Consent under paragraph (1) may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Signed by authority of the Marine Management Organisation

24th April 2017

*J.F. Tuckett*  
Chief Executive Officer  
An authorised employee of the Marine  
Management Organisation

## SCHEDULE

Article 20

### Limits of the harbour

1. From the end of the harbour arm at 51°04.5605'N 01°11.6962'E; thence following an imaginary straight line in a north north-easterly direction to the level of high water at the base of the cliffs south of Martello Tower, to the west of Copt Point, at 51°04.9753'N 01°11.8318'E; thence following the level of high water westward to East Pier at 51°04.8557'N 01°11.4119'E; thence crossing East Pier following an imaginary straight line in a west south-westerly direction to the level of high water at 51°04.8561'N 01°11.4043'E; thence following the level of high water in a westerly direction along the northern wall of the Outer Harbour to the slipway at 51°04.8167'N 01°11.2389'E; thence crossing the slipway along the level of high water to 51°04.8106'N 01°11.1932'E; thence following the level of high water along the wall of the Outer Harbour to the railway viaduct 51°04.7959'N 01°11.1934'E; thence following the railway viaduct south along the level of high water to 51°04.7886'N 01°11.1967'E and under the viaduct to the northern wall of the Inner Harbour at 51°04.7866'N 01°11.1850'E; thence following the level of high water in a westerly, then south south-easterly and then easterly direction along the wall of the Inner Harbour to the southern end of the railway viaduct at 51°04.7164'N 01°11.2209'E; thence following the railway viaduct north along the level of high water to 51°04.7187'N 01°11.2199'E and under the viaduct to the southern wall of the Outer Harbour at 51°04.7186'N 01°11.2288'E; thence following the level of high water eastward along the wall of the Outer Harbour to 51°04.7384'N 01°11.3983'E; thence following the level of high water southward along South Quay and the existing rock revetment to the harbour arm at 51°04.6746'N 01°11.3774'E; thence crossing the harbour arm following an imaginary straight line in a south-westerly direction to the southern side of the harbour arm at 51°04.6543'N 01°11.3585'E; thence following the harbour arm in a westerly direction to 51°04.6561'N 01°11.3419'E; thence following an imaginary line set back 14 metres landward from the designed crest of the maintained beach passing through the points 51°04.6423'N 01°11.3542'E, 51°04.6276'N 01°11.3047'E, 51°04.6175'N 01°11.2720'E, 51°04.6066'N 01°11.2162'E, 51°04.5978'N 01°11.1538'E, 51°04.5875'N 01°11.0223'E, 51°04.5817'N 01°10.8847'E, 51°04.5794'N 01°10.7530'E, 51°04.5752'N 01°10.7028'E, 51°04.5644'N 01°10.6551'E, 51°04.5481'N 01°10.6018'E to the Fishtail Rock Groyne at 51°04.5022'N 01°10.4541'E; thence following the level of high water to the end of the Fishtail Rock Groyne at 51°04.4702'N 01°10.5249'E; thence following an imaginary straight line in an east north-easterly direction to the end of the harbour arm at 51°04.5560'N 01°11.6892'E; thence following the level of high water around the head of the harbour arm to 51°04.5644'N 01°10.6551'E.

2. From the completion of construction of the works authorised by article 4(1), the limits of the harbour between the north-eastern corner of South Quay and the harbour arm will follow the line of the wave wall forming part of those works.

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### EXPLANATORY NOTE

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

This Order authorises Folkestone Harbour Company Limited (“the Company”) as the harbour authority for Folkestone Harbour to construct and maintain works and other facilities at the harbour. It confers ancillary powers on the Company in connection with the works.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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The Order also confers further powers on the Company to maintain and regulate its undertaking (defined in article 2(1)) at the harbour and specifies the harbour limits (so defined).

Copies of the environmental statement furnished by the Company as applicant for this Order pursuant to paragraph 8 of Schedule 3 to the Harbours Act 1964 and the deposited plans, sections and map may be inspected, free of charge, at the offices of the applicant at Port Office, Folkestone Harbour, Kent CT20 1QH.

A full regulatory impact assessment has not been provided for this instrument as there is no impact on business or charities or the voluntary sector.