

---

STATUTORY INSTRUMENTS

---

**2011 No. 1347**

**The Yarmouth (Isle of Wight) Harbour Revision Order 2011**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

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

(2) The Yarmouth (Isle of Wight) Harbour Orders 1931 to 2002<sup>(1)</sup> and this Order may be cited together as the Yarmouth (Isle of Wight) Harbour Orders 1931 to 2011.

**Interpretation**

2.—(1) In this Order—

“the 1931 Order” means the Yarmouth (Isle of Wight) Pier and Harbour Order 1931 (confirmed by the Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931)<sup>(2)</sup>;

“the 2001 Order” means the Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001<sup>(3)</sup>;

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

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

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

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

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

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

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

“the harbourmaster” means any person appointed as such by the Commissioners, and includes his deputies and assistants, and any other person for the time being authorised

---

<sup>(1)</sup> See the Yarmouth (Isle of Wight) Harbour Revision Order 2002 ([S.I. 2002/311](#)), article 1(2).

<sup>(2)</sup> [1931 c.lxxxix](#).

<sup>(3)</sup> [S.I. 2001/2185](#).

by the Commissioners to act, either generally or for a specific purpose, in the capacity of harbourmaster;

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Area of the harbour, etc.**

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

(2) In the event of any discrepancy—

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

the descriptions in question shall prevail over the harbour map.

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

## PART 2

### HARBOUR REGULATION

#### *General and special directions*

#### **General directions as to use of harbour, etc.**

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

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

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

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

(3) A direction under this article may apply—

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

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

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

#### **Procedures for making general directions and designations, etc.**

5. Schedule 4 shall have effect.

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

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

- (a) requiring persons to comply with a requirement made in or under—
  - (i) a general direction;
  - (ii) any provision of this Order; or
  - (iii) any other enactment of local application applicable to the harbour or to the Commissioners;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) requiring the removal from any part of the harbour of the vessel if—
  - (i) it is on fire;

- (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life or property;
- (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons or the carrying on of business in the harbour; or
- (iv) its removal is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent to the harbour;
- (d) requiring the removal of the vessel to outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life or to property, or to any part of the harbour referred to in paragraph (3);
- (e) regulating the loading, discharging, storing and safeguarding of the cargo, fuel, water or stores of the vessel and the dispatch of its business at the harbour;
- (f) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (g) for limiting the speed of the vessel;
- (h) as to the use of the motive power of the vessel;
- (i) prohibiting or restricting the use of fires, lights or barbecues;
- (j) as to the discharge or use of ballast.

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

(3) A special direction may be given for the conservation of any part of the harbour which has been designated, or otherwise has been given special protection or status, under any enactment by reason of its natural beauty, fauna, flora, or archaeological or geological or physiographical features or any other natural features.

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

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

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

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

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

(2) Where a person is charged with an offence under paragraph (1) it shall be a defence for the person to prove—

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

### **Enforcement of special directions**

8.—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction applicable to a vessel is not complied with within a reasonable time, the harbourmaster

may put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board a vessel to attend to a special direction, and after reasonable inquiry has been made the master cannot be found, the harbourmaster may proceed to act under paragraph (1) as if the direction had been given and not complied with.

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

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

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

### *Harbour water taxi services*

### **Restriction of harbour water taxi services**

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

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Licensing of harbour water taxi services**

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

(2) The Commissioners shall not be required to issue a licence if in their reasonable opinion—

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

### **Further provisions as to licences**

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

- (a) conditions as to the hours of operation of the harbour water taxi service (including requirements as regards frequency of service);
- (b) conditions as to the fares levied by the licensed operator of the harbour water taxi service;
- (c) conditions requiring the maintenance of an insurance policy in relation to the vessels used for the purposes of the harbour water taxi service; and

- (d) conditions for ensuring compliance with requirements made by or under any enactment relating to the harbour water taxi service or to the Commissioners, or to the harbour.
- (2) A licence shall have effect for such period (which shall be specified in the licence) as the Commissioners may determine.
- (3) An application for a licence—
  - (a) shall be made in writing to the Commissioners;
  - (b) shall include proposals for the hours of operation and the fares to be levied; and
  - (c) shall contain such information (including information about the applicant and the vessels to be used), and shall be accompanied by such documents, as the Commissioners shall reasonably require.
- (4) The Commissioners shall give notice to the applicant of their decision whether to grant a licence.
- (5) If within three months from the date of the making of an application under paragraph (3) the Commissioners do not give notice under paragraph (4), they shall be deemed to have refused the application.
- (6) The Commissioners may charge a reasonable fee for the grant of a licence.
- (7) If the Commissioners refuse to grant a licence which has been applied for they shall give reasons in writing for their refusal.
- (8) If the Commissioners grant a licence upon terms or conditions, or with modifications, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

### **Appeals in respect of licences**

#### **13. If—**

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

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

### *Moorings*

#### **Moorings provided by Commissioners**

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

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

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

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

### **Moorings provided by others**

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

(2) A licence under this article—

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

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

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

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

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

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

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

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

### **Offences as to moorings**

**16.** Any person who—

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

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

### **Moorings – enforcement provisions**

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

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

- (a) remove the vessel, including any tackle with the vessel;
- (b) sell or otherwise dispose of the vessel and tackle; and
- (c) recover out of the proceeds of sale—
  - (i) any unpaid licence fee payable under article 14;
  - (ii) any unpaid licence fee payable under article 15; and
  - (iii) the expenses of removal and disposal under this paragraph,

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

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

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

### *Other provisions*

#### **Power to designate parts of harbour, etc.**

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

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

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

- (a) the harbourmaster or, as the case may be, such officer may order any person or vessel making use of it without such consent to leave or be removed; and
- (b) the provisions of section 58 of the Harbours, Docks, and Piers Clauses Act 1847(4) shall extend and apply with appropriate modifications in relation to any such vessel.

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

---

(4) 1847 c.27.



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

### **Fuel bowzers**

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

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

(3) A licence under this article—

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

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

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

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

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

- (a) remove the fuel bowser, including any fuel pipes or other equipment provided with it;
- (b) sell or otherwise dispose of the fuel bowser, pipes and equipment together with any fuel contained therein; and
- (c) recover out of the proceeds of sale any unpaid licence fee payable under paragraph (4) and the expenses of removal and disposal under this paragraph,

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

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

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### **Information for purpose of landing charges**

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

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

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

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

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

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

### **Boarding of vessels**

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

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

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

### **Obstruction of officers**

**22.—(1)** Any person who—

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

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

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

## Notices

**23.**—(1) Subject to the following provisions of this article, and to the other provisions of this Order, a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, shall be in writing and may be served by post.

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

(3) Where a person on whom a notice or other document is to be served has agreed in writing that service may be by email, or other electronic means, the Commissioners may employ this method of service until such time as the person informs them in writing that the person is no longer willing to receive notices or documents by email or by such other electronic means.

(4) For the purposes of section 7 of the Interpretation Act 1978<sup>(5)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if the person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the person's last known address at the time of service.

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

(a) in the case of a notice or document to be served on any person as having an interest on, or as the occupier of, any land, it may be served by —

(i) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and

(ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land;

(b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel, or handed to a member of the crew, unless it would not be reasonably practicable to exhibit the notice or document in this manner, or if the notice or document would not be likely to be seen if it were so exhibited;

(c) in the case of any notice or document served otherwise than under paragraph (5)(a) or (b), it may be served by displaying it at the office of the harbourmaster for the period of its duration.

(6) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

## Execution of documents

**24.**—(1) Sections 44 and 45(1) of the Companies Act 2006<sup>(6)</sup> shall apply to the execution of documents by the Commissioners as though they were a company within the meaning of section 1(1) of that Act.

(2) Sections 44 and 45(1) as so applied shall have effect—

(a) as though for references to a director there were substituted references to a Commissioner;

---

<sup>(5)</sup> 1978 c.30.

<sup>(6)</sup> 2006 c. 46

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

#### **Provisions for protection of Sandhouse, etc.**

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

(2) In this article—

“the owner” means the owner for the time being of the freehold interest in the property;

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

“section 63” means section 63 of the 1931 Order.

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

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

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

#### **Provisions as to certain appeals**

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

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

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

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

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

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

#### **Crown Rights**

**27.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular and without prejudice to the generality of the foregoing, nothing in this Order shall authorise any person to take, use, enter upon or in any manner interfere

with, any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

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

### **Saving for Trinity House**

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

### **Amendment of 2001 Order**

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

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

(3) In article 9(1)—

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

(4) In Schedule 2—

- (a) for the expression “article 4(2)(a) or (b)” wherever it occurs there shall be substituted the expression “article 4(1)(a)”;
- (b) in paragraph 11(4)(a), for “above” there shall be substituted “of this Order in the form in which they existed immediately before the Yarmouth (Isle of Wight) Harbour Revision Order 2011 came into force.”.

### **Repeal and revocation of enactments, etc.**

**30.**—(1) On the date of the coming into force of this Order—

- (a) the provision of the Act referred to in columns (1) and (2) of Part 1 of Schedule 6 to this Order shall be repealed to the extent specified in column (3) of that Part; and
- (b) the provisions of the orders referred to in columns (1) and (2) of Part 2 of Schedule 6 to this Order shall be revoked to the extent specified in column (3) of the Part.

(2) The repeals and revocations effected by paragraph (1) shall be subject to Part 3 of Schedule 6 to this Order.

---

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

---

Signed by authority of the Marine Management Organisation

26th May 2011

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