

**2012 No. 1777**

**HARBOURS, DOCKS, PIERS AND FERRIES**

# The Poole Harbour Revision Order 2012

*Made* - - - -

*5th July 2012*

*Coming into force* - -

*23rd July 2012*



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**CONTENTS**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Incorporation of Harbours, Docks, and Piers Clauses Act 1847
4. Area of the harbour

**PART 2**

**HARBOUR REGULATION**

*Management and control of harbour*

5. General functions in respect of harbour
6. Declaration of draught, etc., of vessel
7. Vessels adrift
8. Power to appropriate parts of harbour, etc.  
*Moorings*
9. Power to lay down moorings
10. Licensing of moorings
11. Offences as to moorings, etc.  
*Directions to vessels, etc.*
12. General directions to vessels
13. Publication of general directions
14. Special directions to vessels
15. Failure to comply with directions
16. Enforcement of special directions
17. Master's responsibility in relation to directions
18. Directions as to loading or unloading of goods  
*Wrecks, obstructions and dangers*
19. Powers with respect to disposal of wrecks
20. Protection of Crown interest in wrecks
21. Power to deal with abandoned vessels, etc.
22. Removal of obstructions other than vessels or wreck

23. Removal of vehicles
24. Immobilisation of vehicles illegally parked
25. Power to remove goods
26. Lights detrimental to navigation

*Byelaws*

27. Powers to make byelaws, etc.
28. Procedure for making, etc. of byelaws

PART 3  
CHARGES

29. Charges for services or facilities
30. Payment of charges
31. Compounding arrangements and rebates
32. Deposit for charges
33. Liens for charges
34. Refusal to pay charges for landing place, etc.
35. Exemptions from dues
36. Recovery of charges
37. Harbourmaster may prevent sailing of vessels

PART 4  
FINANCE

38. Commissioners' accounts
39. Borrowing powers
40. Power to charge interest to capital
41. Temporary borrowing powers
42. Reserve fund
43. Register of charges
44. Power to invest
45. Application of revenue
46. Power to give guarantees
47. Power to lend money
48. Gratuities
49. Payment of subscriptions, etc.

PART 5  
MISCELLANEOUS AND GENERAL

50. Indemnity insurance for Commissioners
51. Subsidiaries, etc.
52. Power to subscribe for shares, etc.
53. Development, etc., of land
54. Power to grant tenancies and to dispose of land
55. Boarding of vessels
56. Obstruction of officers
57. Notices
58. Crown rights
59. Saving for Trinity House

60. Amendment of 2001 Order
61. Repeal or revocation of enactments

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- SCHEDULE 1 — HARBOUR LIMITS  
SCHEDULE 2 — PURPOSES FOR WHICH BYELAWS MAY BE MADE  
SCHEDULE 3 — AMENDMENT OF POOLE HARBOUR REVISION ORDER  
2001  
SCHEDULE 4 — REPEAL, REVOCATION AND SAVINGS PROVISIONS  
PART 1 — Repeals  
PART 2 — Revocation  
PART 3 — Savings and transitional provisions

The Poole Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a).

Objections to the making of an order were received but have been withdrawn.

The Secretary of State is the appropriate Minister under section 14(7) of that Act(b) and is satisfied as mentioned in section 14(2)(b).

The Secretary of State, in exercise of the powers conferred by that section and now vested in her(c), makes the following Order:—

## PART 1 PRELIMINARY

### Citation and commencement

- 1.—(1) This Order may be cited as the Poole Harbour Revision Order 2012.
- (2) This Order comes into force on 23rd July 2012.

### Interpretation

2. In this Order—

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

“the 1964 Act” means the Harbours Act 1964;

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

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- (a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedule 6, paragraphs 2 to 4 and 14 and Schedule 12 (Part II); the Criminal Justice Act 1982 (c.48), sections 37 and 46; the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1; S.I. 2006/1177, regulation 2 and Part 1 of the Schedule; the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9; and S.I. 2009/1941, article 2 and Schedule 1, paragraph 12.
- (b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1). Under S.I. 2010/674, article 2, functions in relation to harbour revision orders were generally delegated to the Marine Management Organisation. However, under article 3, the exercise of functions in respect of the application made by the Poole Harbour Commissioners on 9th September 2004 was excluded from that delegation. This order is made pursuant to that application.
- (c) S.I. 1981/238.
- (d) 1847 c.27.
- (e) 1995 c.21.

“the 2001 Order” means the Poole Harbour Revision Order 2001(a);

“the 2006 Act” means the Companies Act 2006(b);

“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;

“authorised officer” means the harbourmaster or another employee of the Commissioners who is authorised in writing by the harbourmaster to act in relation to the relevant provision of this Order;

“the Commissioners” means the Poole Harbour Commissioners;

“general direction” means a direction given under article 12;

“the harbour” means Poole harbour as defined in article 4 and Schedule 1;

“the harbour map” means the map prepared in triplicate, signed by the Head of Maritime Commerce and Infrastructure Division of the Department for Transport and marked “Poole Harbour Revision Order 2012”, of which two copies have been deposited at the office of the Secretary of State for Transport and one copy has been deposited at the office of the Commissioners;

“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;

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

“houseboat” means any vessel or structure lying in the water or on the foreshore of the harbour all or part of which is used or capable of being used as a place of habitation (whether temporarily, intermittently or permanently), as a store or as a place for accommodating or receiving persons for the purposes of shelter, recreation, entertainment or refreshment, as club premises or as offices and includes the remains or wreckage of a vessel or structure formerly so used or capable of being so used, but does not include any ship registered under the 1995 Act or any vessel bona fide used for navigation;

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

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

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

“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 their body weight for the purpose; or
- (c) by a combination of the methods referred to respectively in (a) and (b);

“special direction” means a direction given under article 14;

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990(c);

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(a) S.I. 2001/2820.  
(b) 2006 c.46.  
(c) 1990 c. 8.

- (b) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(a);
- (c) any operator of any electronic communications apparatus within the meaning of the Communications Act 2003(b);

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

“vessel” means a ship, boat, raft or watercraft 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 and, for the purpose of article 55, a houseboat.

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

3.—(1) Subject to paragraphs (2) and (3), sections 2, 3, 23, 27, 29, 31 to 46, 52, 53, 55 to 59, 61 to 66, 69 to 71 and 73 to 78 of the 1847 Act are incorporated in this Order.

(2) For the purposes of the sections incorporated by paragraph (1)—

- (a) “the special Act” means this Order;
- (b) “the harbour, dock or pier” means the harbour;
- (c) “the Promoters of the undertaking” and “the undertakers” mean the Commissioners; and
- (d) “vessel” has the meaning given by article 2.

(3) The sections referred to in paragraph (1) are incorporated subject to the following modifications—

- (a) the maximum fine for any summary offence under any of those sections shall be level 4 on the standard scale;
- (b) in section 23, the words “provided that no such lease be granted for a longer term than three years” shall be omitted;
- (c) nothing in section 53 requires the harbourmaster to serve upon the master of a vessel notice in writing of the direction but such directions may be given orally, or in any other reasonable manner;
- (d) in section 63, for the words from “to a penalty” to the end of the section substitute the words “on summary conviction to a fine not exceeding level 4 on the standard scale”;
- (e) in section 69, for the words “forfeit” to the end of the section substitute the words “be liable on summary conviction to a fine not exceeding level 4 on the standard scale”.

(4) Except as provided in this article, the provisions of the 1847 Act are not incorporated in this Order.

### **Area of the harbour**

4.—(1) The area within which the Commissioners may exercise jurisdiction as a harbour authority, and within which the powers of the harbourmaster may be exercised, is the area described in Schedule 1 and shown edged 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 between the description of the boundaries of the harbour in Schedule 1 and the boundaries shown on the harbour map, the description in Schedule 1 prevails.

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(a) 1949 c.74; section 1 was amended by the Local Government Act 1972 (c.20), Schedule 30.

(b) 2003. c. 21.

**PART 2**  
**HARBOUR REGULATION**  
*Management and control of harbour*

**General functions in respect of harbour**

**5.**—(1) The Commissioners must take such steps as they may consider necessary or desirable from time to time for the conservancy, protection, regulation, maintenance, operation, management and improvement of—

- (a) the harbour and its approaches; and
- (b) the harbour facilities.

(2) For those purposes, and without prejudice to the generality of the foregoing, the Commissioners may—

- (a) improve, maintain, regulate, manage, mark and light the harbour and provide harbour facilities;
- (b) acquire any undertaking or part of an undertaking;
- (c) turn their resources to account;
- (d) do all other things which in their opinion are expedient to facilitate the proper carrying on or development of the harbour; and
- (e) subject to obtaining the necessary right in or over land—
  - (i) place, execute, operate, maintain, renew, alter, remove and reconstruct structures and works and equipment in the harbour; and
  - (ii) provide, maintain and operate railways and related works and facilities on the harbour premises;

(3) This article is without prejudice to the powers of the Commissioners under or by virtue of any other enactment.

**Declaration of draught, etc., of vessel**

**6.**—(1) The master of a vessel entering, leaving or intending to enter or leave the harbour must, if required to do so by the harbourmaster, state—

- (a) the length overall, beam and draught of the vessel;
- (b) the tonnage of the vessel;
- (c) its last port of call and destination;
- (d) particulars of its cargo;
- (e) particulars of its ownership and of any agents acting for the vessel while remaining in the harbour;
- (f) particulars of any defect which may affect the vessel's ability to navigate safely;
- (g) such other particulars relating to the vessel as the Commissioners may require.

(2) The information referred to in paragraph (1) must be given orally or, if the harbourmaster so requires, in writing in a form prescribed by the Commissioners copies of which shall be provided by the harbourmaster.

(3) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse gives incorrect information is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, without prejudice to any right of the Commissioners to compensation for loss or damage caused.

(4) For the purpose of this article “draught” means—

- (a) in relation to a hovercraft or hydrofoil vessel, its draught when afloat and not supported on a cushion of air or on foils or by any other means; and

- (b) in relation to a seaplane, its draught when afloat.

### **Vessels adrift**

7.—(1) If a vessel is adrift in the harbour, the following person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale—

- (a) if the master is on board the vessel, the master;
- (b) otherwise, the owner.

(2) It is a defence for the person 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 the part of that person.

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

8.—(1) Notwithstanding anything in article 3 or any other local enactment, the Commissioners may from time to time set apart or appropriate any part of the harbour, or any lands, works, buildings, machinery, equipment or other property of the Commissioners in 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 may, otherwise than in accordance with the terms, conditions and regulations of the setting apart or appropriation, make use of any part of the harbour or any lands, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of an authorised officer, and—

- (a) an authorised officer may order any person or vessel making use thereof without such consent to leave or be removed; and
- (b) the provisions of section 58 of the 1847 Act apply with appropriate modifications in relation to any such vessel.

### *Moorings*

### **Power to lay down moorings**

9.—(1) The Commissioners may place, lay down, maintain, renew, use or remove such moorings in the harbour as they consider necessary or desirable for the convenience of vessels—

- (a) on land owned or leased by them or which they are entitled to use for that purpose; and
- (b) on any other land in the harbour, with the consent in writing of the owner and any lessee.

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

### **Licensing of moorings**

10.—(1) The Commissioners may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the harbour.

(2) A licence—

- (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 mooring, or to several moorings.

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



## Offences as to moorings, etc.

11.—(1) Any person who—

- (a) intentionally obstructs any person acting under the authority of the Commissioners in setting out moorings in the harbour;
- (b) intentionally and without lawful authority pulls up or removes any mooring or any part of any mooring in the harbour;
- (c) places, lays down, maintains, renews or has in the harbour any mooring not provided under article 9 or licensed under article 10;
- (d) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Commissioners or at a quay, jetty or other work provided for the mooring of vessels; or
- (e) without reasonable excuse causes or permits a vessel to be moored at a mooring provided under article 9 or licensed under article 10 which the person concerned is not entitled to use;

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

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

(3) Subject to paragraph (6), if any person commits an offence under paragraph (1)(d) or (1)(e) the Commissioners may—

- (a) remove the vessel, including any tackle with the vessel;
- (b) sell or otherwise dispose of the vessel and tackle; and
- (c) recover out of the proceeds of sale—
  - (i) any unpaid charge payable under article 9;
  - (ii) any unpaid licence fee payable under article 10; and
  - (iii) the expenses of removal and disposal under this paragraph.

(4) If the proceeds of sale under paragraph (3)(b) are sufficient to allow the Commissioners to recover all amounts permitted by paragraph (3)(c), the Commissioners shall hold any proceeds of sale on trust for the owner.

(5) If—

- (a) the proceeds of sale under paragraph (3)(b) are insufficient to allow the Commissioners to recover all amounts permitted by paragraph (3)(c); or
- (b) there is no sale of the vessel,

the Commissioners may recover the amounts referred to in paragraph (3)(c) net of any proceeds of sale from the owner as a debt.

(6) The Commissioners must not exercise their power to remove a vessel under paragraph (3) unless—

- (a) they have given to the owner seven clear days' notice in writing of their intention to do so; or
- (b) it is an emergency.

(7) Where paragraph (6)(b) applies, the Commissioners must notify the owner that they have removed the vessel as soon as reasonably practicable afterwards.

**General directions to vessels**

12.—(1) The Commissioners may give directions under this article (“general directions”) in respect of vessels in, or proposing to enter, or leaving, the harbour—

- (a) for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation and the safety of persons and property in the harbour; or
- (b) for the conservation of any part of the harbour which has been designated, or has otherwise been given special protection or status, under any enactment by reason of its natural beauty, flora, fauna or archaeological or geological or physiographical features or any other natural features.

(2) Without prejudice to the generality of paragraph (1) the Commissioners may give general directions for any of the following purposes—

- (a) for designating areas, routes, fairways or channels in the harbour or the approaches which vessels are to use, or refrain from using, for movement, mooring or anchorage;
- (b) for securing that vessels move only at certain times or during certain periods;
- (c) for regulating the speed of vessels;
- (d) for requiring the use of any equipment (including engines) forming part of or carried on the vessel;
- (e) for prohibiting—
  - (i) entry into the harbour by a vessel which for any reason would be or would be likely to become a danger—
    - (A) to other vessels in the harbour, or to persons, property, flora or fauna in the harbour; or
    - (B) to any part of the harbour such as is referred to in paragraph (1)(b); and
  - (ii) entry into or navigation within any designated fairway or channel during any temporary obstruction of the fairway or channel;
- (f) for prohibiting entry into or movement in the harbour or the approaches by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no direction given under this sub-paragraph prevents the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) requiring the master of a vessel to give to the harbourmaster information relating to the vessel reasonably required by the harbourmaster for effecting any of the purposes of this paragraph;
- (h) for prescribing the action to be taken in relation to vessels which have become adrift, or sunk, or run aground;
- (i) so far as is necessary for the safety of navigation, for requiring or regulating the use of tugs in relation to a vessel.

(3) A general direction may apply—

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

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

**Publication of general directions**

13.—(1) Subject to paragraphs (2) to (4), the Commissioners must not give, amend or revoke a general direction unless they have caused a notice of their intention to do so to be published, not less than 28 days before—

- (a) once in Lloyd’s List or some other newspaper specialising in shipping news; and
  - (b) once in a local newspaper circulating in the area of the harbour.
- (2) A notice is valid for the purposes of paragraph (1) only if—
- (a) it states where copies of any existing directions and the Commissioners’ proposals may be inspected free of charge;
  - (b) it states that such copies are available for purchase, the price payable and how an order may be placed;
  - (c) it states that representations in relation to the proposals may be made to the Commissioners in writing by a specified date, not being less than 28 days from the date of the notice.
- (3) If representations are made before the date specified under paragraph (2)(c), the Commissioners must not give, amend or revoke a direction without considering those representations.
- (4) In an emergency—
- (a) paragraphs (1) to (3) do not apply; and
  - (b) the Commissioners must publish the general directions which have been given, amended or revoked as soon as reasonably practicable afterwards in such manner as the Commissioners consider appropriate.

### **Special directions to vessels**

**14.**—(1) The harbourmaster may give directions under this article (“special directions”) in respect of a vessel anywhere in the harbour for any of the following purposes—

- (a) requiring persons to comply with a requirement made in or under a general direction;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) requiring the removal from any part of the harbour of a vessel if—
  - (i) it is on fire; or
  - (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; or
  - (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 dispatch 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 its removal outside the harbour if such removal is considered by the harbourmaster to be necessary in order to avoid danger to life or to property;
- (e) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores and the dispatch of its business at the harbour;
- (f) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
- (g) regulating the speed of the vessel;
- (h) regulating the use of the motive power of the vessel;
- (i) prohibiting or restricting the use of fires or lights;
- (j) regulating the discharge or use of ballast;
- (k) to aid 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.

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

- (3) A special direction may be given in any manner the harbourmaster considers appropriate.
- (4) The harbourmaster may revoke or amend a special direction.

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

**15.**—(1) The master of a vessel who fails to comply with a general direction or special direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (2) It is a defence for a person charged with an offence under paragraph (1) to prove—
  - (a) that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
  - (b) that they had a reasonable excuse for acting or failing to act;
  - (c) that the offence was not caused or facilitated by any act or neglect on their part or on the part of any other person engaged or employed by them and that all reasonable steps were taken to prevent the commission of the offence; or
  - (d) that they had reasonable grounds for supposing that non-compliance with the direction was necessary to secure the safety of any vessel or its cargo, or that in the circumstances compliance was impracticable.

### **Enforcement of special directions**

**16.**—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction 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) Subject to paragraph (3), if there is no one on board a vessel to attend to a special direction, the harbourmaster may proceed as if the direction had been given and not complied with.

- (3) Paragraph (2) does not allow the harbourmaster to exercise powers under paragraph (1)—
  - (a) in relation to a vessel other than a lighter, unless the master cannot be found after reasonable inquiry has been made; and
  - (b) in relation to a lighter, unless it is obstructing or interfering with navigation.

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

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

**17.** The giving of a general direction or a special direction 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.

### **Directions as to loading or unloading of goods**

**18.**—(1) The Commissioners may designate any part of the harbour for the loading and unloading of any goods to which this article applies.

(2) Where pursuant to paragraph (1) the Commissioners have designated a place for the loading or unloading of certain types of goods the harbourmaster may direct that such goods, intended to be loaded onboard or unloaded from a vessel, must not be deposited or received elsewhere than at the place so designated.

- (3) If any person disobeys a direction given under paragraph (2)—
  - (a) the Commissioners may remove the goods to the designated place and recover the expenses incurred from that person as a debt; and

(b) the removal shall be at the risk of that person.

(4) The goods to which this article applies are goods which are loaded or unloaded in connection with any trade or business, goods in bulk and goods the nature or character of which is such as, in the opinion of the Commissioners, to give rise to special risk of contamination, taint, stain, injury or danger to other goods or to persons, property or water or to necessitate the provision of special facilities for the handling of the goods or for the safety, protection, welfare or accommodation of persons employed in, or in connection with, such handling.

### *Wrecks, obstructions and dangers*

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

**19.**—(1) In its application to the Commissioners, section 252 of the 1995 Act has effect subject to the provisions of this article and article 20.

(2) Subject to paragraph (3), and to any enactment limiting liability of the owner, the Commissioners may recover from the owner of any vessel in relation to which they have exercised their powers under section 252 any expenses reasonably incurred by the Commissioners under that section in relation to that vessel which are not reimbursed out of the proceeds of sale (if any) within the meaning of that section.

(3) The Commissioners may recover expenses under paragraph (2) only if—

- (a) the powers under section 252 were exercised in an emergency;
- (b) before exercising powers under section 252(2)(a) or (c), the Commissioners—
  - (i) gave the owner not less than 48 hours' notice of their intention to do so; and
  - (ii) did not receive within that period written notice of the owner's intention to dispose of the vessel; or
- (c) they exercised powers under section 252(2)(a) or (c) in the circumstances set out in paragraph (4) of this article.

(4) If the Commissioners receive a notice under paragraph (3)(b)(ii), they must not exercise powers under section 252(2)(a) or (c)—

- (a) for seven days after receiving the counter-notice; and
- (b) until they are satisfied that—
  - (i) the owner is not proceeding with the disposal with all reasonable diligence; or
  - (ii) the owner is not complying with directions given by the Commissioners for the purpose of preventing interference with navigation.

(5) In this article the expression “owner” in relation to any vessel means the present owner or, as the case may require, the person who was the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel.

#### **Protection of Crown interest in wrecks**

**20.**—(1) Without prejudice to section 308(1) of the 1995 Act, the Commissioners must not exercise powers under section 252(2)(a) or (c) of that Act—

- (a) in relation to any vessel sunk, stranded or abandoned by design by or under the orders of a person acting on behalf of Her Majesty or an officer or servant of the Crown acting in the course of duty as such;
- (b) except with the consent of the Secretary of State, in relation to any vessel which, at the time when the vessel was sunk, stranded or abandoned—
  - (i) had been required to be placed at the disposal of Her Majesty or of a government department; and
  - (ii) was appropriated to the service, under the direction and control of the Secretary of State, of Her Majesty's ships of war.

(2) The Secretary of State's consent is not required under paragraph (1)(b) in cases of emergency.

(3) The Commissioners must exercise their functions under section 252(2)(c) and (d) in accordance with any direction issued to them by the receiver of wreck.

(4) If the Commissioners exercise their power under section 252(2)(c) to sell property on which customs or excise duties are payable—

- (a) they must pay those duties; and
- (b) they may recover such expenses from the proceeds of sale.

(5) The limitation on the powers of the Commissioners in paragraph (1) shall be disregarded for the purposes of section 253(1)(b) of the 1995 Act.

#### **Power to deal with abandoned vessels, etc.**

**21.**—(1) The Commissioners may remove, sell, destroy or otherwise dispose of any vessel abandoned or neglected on the harbour premises or other land adjoining the waters of the harbour.

(2) The Commissioners may reimburse themselves out of the proceeds of sale of any such vessel, or any part of any such vessel, for any expenses incurred by them or the harbourmaster in respect of the vessel and must pay the surplus, if any, to the owner.

(3) If—

- (a) the proceeds of sale under paragraph (1) are insufficient to allow the Commissioners to recover all amounts permitted by paragraph (2); or
- (b) there is no sale of the vessel,

the Commissioners may recover the amounts referred to in paragraph (2) net of any proceeds of sale from the owner as a debt.

(4) Except in an emergency the Commissioners must not exercise their powers under paragraph (1) unless they have given to the owner 28 clear days' notice in writing of their intention to do so and—

- (a) in any case in which mooring or other fees are or have been payable to the Commissioners in respect of the vessel, such fees have not been paid; or
- (b) in any case in which no such fees are payable but the presence of the vessel in the harbour is governed by terms and conditions agreed with the Commissioners, there is a substantial breach of the terms and conditions.

(5) Where, in an emergency, the Commissioners exercise their powers under paragraph (1) without notice, they must notify the owner that they have exercised their powers in relation to the vessel as soon as reasonably practicable afterwards.

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

**22.**—(1) Without prejudice to their powers under any other enactment the Commissioners may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour, or is abandoned or left without lawful authority anywhere on the harbour premises, other than—

- (i) a vessel; or
- (ii) wreck within the meaning of Part IX of the 1995 Act; or
- (iii) anything placed or constructed by any person under the provisions of any enactment, or of a consent or licence given or issued by the Commissioners.

(2) If anything removed by the Commissioners under paragraph (1) is known to the Commissioners to be, or is so marked as to be readily identifiable as, the property of any person, the Commissioners must within 28 days of its coming into their custody give notice to that person in accordance with paragraph (3).

(3) A notice is valid for the purposes of paragraph (2) only if it—

- (a) specifies the thing removed;
- (b) states that, upon proof of ownership to the reasonable satisfaction of the Commissioners, possession of the thing may be retaken at a place specified in the notice within the time to specified, being not less than 14 days after the date when the notice is served; and
- (c) summarises the effect of paragraphs (4)(a), (5), (6) and (7) of this article.

(4) The Commissioners may sell or dispose of anything removed by them under paragraph (1)—

- (a) where a notice is served under paragraph (2), at any time after the period specified in the notice;
- (b) where no such notice is served, at any time after the expiry of a period of 14 days commencing with the date of the removal.

(5) Notwithstanding any other provision of this article, the Commissioners may, without notice, at such time and in such manner as they think fit, sell or dispose of anything which is of a perishable or obnoxious nature, or the custody of which involves unreasonable expense or inconvenience.

(6) Where the Commissioners sell anything in accordance with paragraph (4) or paragraph (5) they—

- (a) may recover out of the proceeds of sale the expenses of removal and sale or disposal under this article; and
- (b) must pay any surplus proceeds of sale to any person proving to the reasonable satisfaction of the Commissioners within 56 days of the date of the sale to be the owner of the thing at the time of the removal.

(7) If anything removed under this article—

- (a) is sold by the Commissioners, and the proceeds of sale are insufficient to reimburse them for the amount of the expense incurred in the exercise of their powers of removal and sale; or
- (b) is unsaleable;

the Commissioners may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Commissioners, or who was the owner at the time of its abandonment or loss.

### **Removal of vehicles**

**23.—**(1) If a vehicle is left without permission of the Commissioners—

- (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 is prohibited by a sign displayed by the Commissioners; or
- (c) in a parking place provided by the Commissioners within the harbour premises, for a longer period than 24 hours or such other period as may be specified in a sign displayed by the Commissioners;

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

(2) Any sign is validly displayed for the purposes of paragraph (1)(b) or (c) only if it is conspicuously displayed at or close to the place to which it relates.

(3) Where the Commissioners exercise the power of paragraph (1) they must inform the police as soon as practicable afterwards.

(4) The Commissioners may recover the expenses of and incidental to the exercise of the power of paragraph (1) from any person responsible.

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

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under paragraph (1), unless it is shown that the owner was not concerned in, and did not know of, it being put there; or

(b) any person who put the vehicle in that place.

(6) If the Commissioners in exercise of the power of paragraph (1) remove a vehicle to a place which is not readily visible from its original position, they must (unless the vehicle is not registered in the United Kingdom) give notice as soon as reasonably practicable afterwards to the person registered as the keeper of the vehicle for the purposes of regulations made under the Vehicle Excise and Registration Act 1994<sup>(a)</sup> at the registered address of that person stating—

- (a) that the Commissioners have exercised the power in paragraph (1); and
- (b) the place to which the vehicle has been removed.

(7) The Commissioners must display a sign stating the general effect of paragraph (1) in a prominent position at each place where a road accessible to vehicles enters any part of the harbour premises.

### **Immobilisation of vehicles illegally parked**

**24.**—(1) If a vehicle is left on the harbour premises in the circumstances within article 23(1) an authorised officer may—

- (a) fix an immobilisation device to the vehicle while it remains in the place in which the officer finds it; or
- (b) move it from that place to another place on the harbour premises and fix an immobilisation device to it in that other place.

(2) The power under paragraph (1) is validly exercised only if—

- (a) the notices required by paragraph (8) were on display when the vehicle was left on the harbour premises; and
- (b) the authorised officer affixes to the vehicle a notice—
  - (i) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device; and
  - (ii) specifying the steps to be taken in order to secure its release, including any charge payable.

(3) A vehicle to which an immobilisation device has been fixed in accordance with this article may only be released from that device by or under the direction of an authorised officer.

(4) The Commissioners must ensure that a vehicle to which an immobilisation device has been fixed in accordance with paragraph (1) is released from that device when the steps specified in accordance with paragraph (2)(b)(ii) have been taken.

(5) Any person who, without being authorised to do so in accordance with paragraph (3), removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Where a vehicle is moved in accordance with this article before an immobilisation device is fixed to it, any power of removal under article 23 which was exercisable in respect of that vehicle immediately before it was so moved shall continue to be exercisable while the vehicle remains in the place to which it was so moved.

(7) In this article “immobilisation device” means any device or appliance which is approved as an immobilisation device for the purposes of section 104 of the Road Traffic Regulation Act 1984<sup>(b)</sup>.

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

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(a) 1994 c.22.

(b) 1984 c.27.



### **Power to remove goods**

25.—(1) If any goods are left on or in any part of the harbour premises the Commissioners may give notice that the goods must be removed within a specified period (which must not be less than six hours)—

- (a) where reasonably practicable, to the owner of the goods in person;
- (b) otherwise, by affixing a written notice to the goods.

(2) Upon the expiry of the notice, the Commissioners may cause the goods to be removed to a warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(3) Notwithstanding such removal on behalf of the Commissioners, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Commissioners by the owner in respect of the goods.

(4) The Commissioners may, if they think fit, after giving seven days' notice to the owner of the goods, and shall if so required by the owner of the goods, sell or otherwise dispose of the goods, in such manner as they think fit and reimburse themselves out of the proceeds of sale, and the Commissioners shall hold any surplus of such proceeds on trust for the person entitled to the proceeds.

(5) In this article, "goods" includes vehicles which are being exported or imported through the harbour.

### **Lights detrimental to navigation**

26.—(1) The Commissioners may by notice require a person placing or using in or near the waters of the harbour a light which is likely to mislead persons navigating in those waters or to interfere with the safe navigation of vessels—

- (a) within a reasonable time specified in the notice, at the option of the recipient of the notice—
  - (i) to screen or alter the light so that it ceases to be likely to mislead persons, or to interfere with the safe navigation of vessels, or
  - (ii) to extinguish or remove the light; and
- (b) not to use the light except as so screened or altered or, as the case may be, not to use or replace the light; and
- (c) to consult with the Commissioners before placing or using another light in lieu of the light to which the notice relates.

(2) A person who fails to comply with a notice given under this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) It is a defence for a person charged with an offence under this article to prove that compliance with the notice would involve the contravention by any person of any enactment.

(4) Nothing in this article shall apply to any light displayed in accordance with any direction given by the Secretary of State.

### *Byelaws*

### **Powers to make byelaws, etc.**

27.—(1) The Commissioners may from time to time make byelaws for the management and regulation of the harbour and the harbour undertaking.

(2) Without prejudice to the generality of paragraph (1) byelaws may be made under this article for all or any of the purposes set out in Schedule 2.

(3) Byelaws made under this article may—

- (a) provide that breach of a byelaw is an offence for which a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale and, in the case of a

continuing offence, a further fine not exceeding £50 for each day or part of a day on which the offence is continued after conviction for it;

- (b) relate to the whole or any part of the harbour;
- (c) make different provisions for different parts of the harbour or in relation to different classes of vessels or vehicles;
- (d) make different provisions for different circumstances.

(4) Any byelaw made under this article may require the payment, on application for any consent, licence or other authorisation required by the byelaw, of such reasonable fees as the Commissioners may determine.

(5) Where a person is charged with the offence of breaching a byelaw, it shall be a defence for the person to prove—

- (a) that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence;
- (b) that the person charged 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 charged or on the part of any other person engaged or employed by the person charged and that all reasonable steps were taken to prevent the commission of the offence.

#### **Procedure for making, etc. of byelaws**

**28.**—(1) The provisions of sections 236(3) to (8) and (11) and 238 of the Local Government Act 1972<sup>(a)</sup> (which relate to the procedure for making, and evidence of, byelaws) apply to any byelaws made by the Commissioners under article 27 and those provisions, in their application to any such byelaws, have effect subject to the following modifications.

- (a) references to a local authority have effect as if they were references to the Commissioners;
- (b) section 236(4) has effect as if, at the end, there were inserted “and in Lloyds List or some other newspaper specialising in shipping news”; and
- (c) section 236(7) has effect as if the words “with or without modifications” were inserted after the word “confirm” in the first place where that word occurs.

(2) Where the confirming authority proposes to confirm byelaws including a modification which it considers substantial—

- (a) the Commissioners must take such steps as the authority may direct for the purpose of informing persons likely to be concerned with the modification; and
- (b) the authority must not confirm the byelaws until it is satisfied that those persons have had a reasonable opportunity to make representations to the authority on the modification.

(3) Section 238, in its application to any byelaws made under article 27, has effect as if for the reference to the proper officer of the authority there were substituted a reference to the Chief Executive of the Commissioners.

(4) The confirming authority for the purposes of section 236 in its application to byelaws made under article 27 is the Secretary of State.

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(a) 1972 c.70.

## PART 3

### CHARGES

#### **Charges for services or facilities**

29. Without prejudice to section 26 of the 1964 Act, the Commissioners may demand, take and recover such reasonable charges for services and facilities they provide in relation to the harbour as they may from time to time determine.

#### **Payment of charges**

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

(2) Charges payable to the Commissioners on or in respect of—

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

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

(3) Where paragraph (2) provides that charges are payable by more than one person, those persons shall be jointly and severally liable.

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

#### **Compounding arrangements and rebates**

31. The Commissioners may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

#### **Deposit for charges**

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

(2) Where such a person fails to deposit or guarantee the sum of money required the Commissioners may detain in 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 paid.

#### **Liens for charges**

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

(2) A wharfinger or carrier who is not personally liable for the payment of charges on goods in their custody may pay or by agreement with the Commissioners give security for charges on those goods, in which case the wharfinger or carrier shall have a like lien on the goods for the amount of

those charges as would have existed in respect of their charges for safe custody or carriage of the goods, as the case may be.

#### **Refusal to pay charges for landing place, etc.**

**34.** An officer of the Commissioners may prevent a vessel from using a landing place or any other facilities provided by the Commissioners if the master of the vessel refuses to pay—

- (a) the charges for such use; or
- (b) any other charges due to the Commissioners.

#### **Exemptions from dues**

**35.—**(1) Except insofar as may be agreed between the Commissioners and the government department or person concerned, the Commissioners shall not be entitled to demand dues from, or in respect of—

- (a) a vessel—
  - (i) in the service of HM Revenue and Customs in the execution of their duties and not carrying goods for reward;
  - (ii) belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service;
  - (iii) in the service of a police force or other emergency service;
- (b) HM Revenue and Customs or any officer or other person employed in their service in execution of their duties in respect of a vessel or goods under customs seizure, or in respect of goods or other articles belonging to, or in the care or service of, HM Revenue and Customs;
- (c) an officer of HM Revenue and Customs or any other person employed in their service in execution of their duties;
- (d) a person employed by the Secretary of State for Defence while in the execution of duty.

(2) Officers of the Department for Transport in the execution of their duty shall at all times be exempt from dues.

(3) In this article “dues” means ship, passenger and goods dues which the Commissioners may demand under section 26 of the 1964 Act.

#### **Recovery of charges**

**36.** In addition to any other remedy given by this Order and by any other enactment as incorporated with this Order, and, in a case where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay all or part of the charge, whether or not the Commissioners’ collector has gone on board the vessel and demanded the charge pursuant to section 44 of the 1847 Act, the Commissioners may recover any charges payable to them as a debt.

#### **Harbourmaster may prevent sailing of vessels**

**37.** The harbourmaster may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to the harbourmaster of the payment of any charges payable in respect of—

- (a) the vessel;
- (b) passengers on the vessel; or
- (c) goods imported or exported on the vessel.

## PART 4

### FINANCE

#### **Commissioners' accounts**

**38.**—(1) The accounts of the Commissioners shall be made up to the end of 31<sup>st</sup> March in any year or to such other date as the Commissioners may determine.

(2) As soon as reasonably practicable after their annual statement of accounts is prepared and audited, the Commissioners must—

- (a) make available a copy of the statement for a period of three months at the offices of the Commissioners for inspection free of charge by members of the public; and
- (b) subject to the payment of a reasonable charge, supply a copy of the statement to any person who requests to be supplied with a copy.

#### **Borrowing powers**

**39.**—(1) Notwithstanding anything contained in any enactment, the Commissioners may from time to time, for the general purposes of the undertaking, borrow upon the security of all or any of the revenues and property of the Commissioners and by any method or methods which they see fit such sums of money as they consider necessary.

(2) Moneys borrowed under paragraph (1) may be applied only to purposes to which capital money is properly applicable.

(3) For the purposes, but without prejudice to the generality, of paragraph (2) purposes to which capital money is properly applicable shall be deemed to include—

- (a) any major works of repair or maintenance of any part of the works forming part of the undertaking;
- (b) the payment of any interest falling due within the five years immediately following the date of the borrowing of any sum of money borrowed by the Commissioners under this article;
- (c) the repayment within 12 months from the date of borrowing of any sum for the time being outstanding by way of principal on any amount previously borrowed; and
- (d) any payment relating to pensions paid or to be paid to any past or present employee of the Commissioners or to the family or dependants of such persons.

#### **Power to charge interest to capital**

**40.** Where the Commissioners, in the exercise of powers conferred upon them by any enactment, commence any work or operations, they may, during such period not exceeding five years from the commencement of the work as they determine, charge to capital as part of the cost of the work interest on any money raised to defray—

- (a) the cost of the acquisition of any lands for the purpose of the work; and
- (b) the expenses of constructing or carrying out the work.

#### **Temporary borrowing powers**

**41.** The Commissioners may borrow temporarily, by way of overdraft or otherwise, such sums as they may require for meeting their obligations or discharging their functions.

#### **Reserve fund**

**42.**—(1) The Commissioners may establish and maintain reserve funds.

(2) The Commissioners may if they think fit carry to a reserve fund such part of their receipts on revenue account as shall be available for the purpose until in any year the fund amounts to a sum equivalent to the gross revenue of the Commissioners in the immediately preceding financial year and if the fund at any time falls below that amount the Commissioners may carry to the fund so much of any such receipts as is required to restore the fund to that amount and is available for the purpose.

(3) Any reserve fund established or maintained under this article shall from time to time be applied by the Commissioners in their discretion—

- (a) in or towards meeting any deficiency on revenue account in any year; or
- (b) to meet any extraordinary claim or demand in respect of the undertaking; or
- (c) in or towards payment of the cost of renewing, improving, extending or replacing any part of the works forming part of the undertaking or any vessels, plant or equipment of the Commissioners; or
- (d) for improving the operational area and the navigation of the harbour and the approaches to the harbour; or
- (e) for any other lawful purpose sanctioned by the Commissioners.

### **Register of charges**

**43.**—(1) The Commissioners must keep at their principal office a register of all charges created by them under article 39.

(2) The Commissioners must enter on the register in relation to each charge—

- (a) the revenues or property charged; and
- (b) the amount of the charge and the name of the person entitled to it.

(3) The Commissioners must allow the register to be inspected during reasonable hours—

- (a) by any chargee, without charge; and
- (b) by any other person, upon payment of a reasonable fee.

(4) The fee charged by the Commissioners under paragraph (3)(b) must not exceed what they consider a reasonable contribution towards the cost incurred by the Commissioners in providing facilities for the inspection.

### **Power to invest**

**44.** The Commissioners may invest in any manner in which they are for the time being authorised to invest moneys the whole or any part of any sum borrowed under this Order and not for the time being required for the purpose for which it was borrowed, and any other money held by the Commissioners for the purposes of this Order and not for the time being required for the purposes of the undertaking.

### **Application of revenue**

**45.** All revenues received by the Commissioners shall be applied in the following order—

- (a) in payment of any expenses properly chargeable to revenue incurred by the Commissioners;
- (b) in payment year by year of the interest accruing on any moneys borrowed by the Commissioners; and
- (c) in making provision for the repayment of moneys borrowed by the Commissioners.

### **Power to give guarantees**

**46.**—(1) In this article, “company” has the meaning given by section 1 of the 2006 Act and in this article and in article 47 “subsidiary” has the meaning given by section 1159 of that Act.

(2) The Commissioners for the purposes of the undertaking may give guarantees and enter into contracts of indemnity or suretyship of all kinds for the benefit of any subsidiary or other company in which the Commissioners have a substantial holding and in connection with such guarantees or contracts may mortgage or charge all or any of their property, revenues or tolls.

#### **Power to lend money**

47.—(1) In this article, “harbour operations” has the meaning given by section 57 of the 1964 Act.

(2) The Commissioners may lend money for the purposes of the harbour to—

- (a) any subsidiary of the Commissioners; or
- (b) any person carrying on or proposing to carry on harbour operations or any business in the harbour.

#### **Gratuities**

48.—(1) The Commissioners may pay such gratuities, pensions or allowances and make such other payments as they may think fit to any past or present employee of the Commissioners or the family or dependants of such an employee.

(2) The Commissioners may enter into and carry into effect, agreements with any insurance company or other body for securing for the benefit of any such employee, family or dependants such gratuities, pensions, allowances or payments as are authorised by this article.

#### **Payment of subscriptions, etc.**

49.—(1) The Commissioners may pay or make reasonable subscriptions, payments or donations, whether annually or otherwise, to the funds of such associations, public institutions or charities as the Commissioners think fit.

(2) The Commissioners may defray reasonable expenses incurred in connection with official receptions, promotion or entertainment connected with the affairs of the Commissioners.

## **PART 5**

### **MISCELLANEOUS AND GENERAL**

#### **Indemnity insurance for Commissioners**

50. The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnify individual Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or any of them, not being an act or omission which was a deliberate or reckless breach of duty.

#### **Subsidiaries, etc.**

51.—(1) The Commissioners may form and promote a wholly-owned subsidiary for carrying on activities which the Commissioners have power to carry on under or by virtue of this Order or any other enactment.

(2) The Commissioners shall secure that any company formed in exercise of the powers conferred by paragraph (1) remains such a wholly-owned subsidiary.

(3) The Commissioners may enter into arrangements with a company formed in exercise of the powers conferred by paragraph (1) for the transfer to that company from the Commissioners or from any other company so formed, in such manner and on such terms (including payments by any of the parties to the arrangements to any of them) as may be provided for by the arrangements, of any property, rights, liabilities or obligations of the Commissioners or of that other company

which are relevant to the carrying on of the activities to be carried on by the first mentioned company.

(4) In this article, “wholly-owned subsidiary” has the meaning given by section 1159(2) of the 2006 Act.

#### **Power to subscribe for shares, etc.**

**52.** The Commissioners may in connection with or for the purposes of the undertaking subscribe for or acquire shares or securities in any body corporate.

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

**53.—**(1) The Commissioners may in connection with or for the purposes of the undertaking form and promote, or join with any other person in forming and promoting, a company—

- (a) for using or developing for any purpose, any land within or in the vicinity of the harbour; or
- (b) for carrying on any trade or business on any such land.

(2) Except as is otherwise provided by any enactment or rule of law, the powers of the company may include powers to do anything necessary or expedient for the purposes of the objects mentioned in paragraph (1) or for purposes incidental to those purposes, notwithstanding that the Commissioners would not themselves have the power to do that thing.

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

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

(2) The Commissioners may also dispose of, or grant the use or occupation for any purpose of, any lands, works, buildings, machinery equipment or other property they hold for the purpose of the harbour and which they consider to be surplus to that which they require to hold for that purpose.

#### **Boarding of vessels**

**55.—**(1) Any duly authorised officer of the Commissioners may enter and inspect a vessel in the harbour—

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

(2) The power in paragraph (1) may be exercised only—

- (a) in an emergency; or
- (b) if notice of the officer’s intention to do so has been given to the owner or person appearing to have charge of the vessel, and (if requested) the officer’s written authorisation for the purposes of this article has been shown to them.

(3) A notice is validly given for the purposes of paragraph (2)(b) only if a copy of this article is attached to it.

#### **Obstruction of officers**

**56.—**(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 under this Order; or
- (b) without reasonable excuse fails to comply with a requirement properly made by such an officer; or
- (c) without reasonable excuse fails to provide any information (including their name and address) properly required by such an officer,

is 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 deliberately false statement is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## Notices

**57.**—(1) A notice or other document required or authorised to be served for the purposes of this Order, or of any byelaw made or having effect, or any direction given or having effect, under this Order, may be served—

- (a) in the case of a notice under article 19(3)(b)(i), by registered post or recorded delivery;
- (b) in any other case, by post; or
- (c) with the consent of the person to be served (“the recipient”), and subject to paragraphs (7) to (10), by electronic transmission.

(2) Where the recipient is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(a) as it applies for the purposes of this article, the proper address of the recipient in relation to the service of a notice or document under paragraph (1) is, if the recipient 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;
- (b) in any other case, the last known address of the recipient at the time of service.

(4) Where a notice or other document such as is referred to in paragraph (1) is required or authorised to be served on the recipient as having any interest in, or as the occupier of, land and the name or address of the recipient cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to the recipient by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) 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.

(5) Where a notice or other document such as is referred to in paragraph (1) is required or authorised to be served in relation to a vessel (including a wreck) or structure, and the name or address of the recipient cannot be ascertained after reasonable inquiry the notice or document may be served by—

- (a) handing it to a member of the crew of the vessel, or to a person employed on the structure, as the case may be; or
- (b) exhibiting it in a conspicuous position on or near the vessel or structure, 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.

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(a) 1978 c.30.

(6) A notice or other document which cannot be exhibited in the circumstances referred to in paragraph (5)(b), or which in the case of a notice under article 19(3)(b) is to be served on a recipient whose address is not in the United Kingdom, may be served by displaying it at the office of the harbourmaster for the period of its duration; and a copy of any notice which is served in the manner provided by paragraph (4) or (5) shall be so displayed at that office for the period of its duration.

(7) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient has consented to the use of electronic transmission in writing or by electronic transmission.

(8) Where the recipient of a notice or other document served or sent by electronic transmission requests the sender within 7 days of receipt to provide a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(9) A recipient may revoke any consent to the use of electronic transmission in accordance with paragraph (10).

(10) Where a recipient is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) the recipient shall give notice in writing or by electronic transmission revoking any consent given by the recipient for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the recipient in the notice but that date shall not be less than 7 days after the date on which the notice is given.

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

(12) This article does not apply to—

- (a) a special direction; or
- (b) a notice as to the removal of a vehicle under article 23(6); or
- (c) a notice affixed to a vehicle under article 24(2)(b) or affixed to goods under article 25(1)(b).

### **Crown rights**

**58.**—(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**

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

### **Amendment of 2001 Order**

**60.** Schedule 3 has effect.

### **Repeal or revocation of enactments**

**61.**—(1) On the date of the coming into force of this Order the Acts and Order referred to in columns (1) and (2) of Parts 1 and 2 of Schedule 4 are repealed or revoked to the extent specified in column (3) of that Part.

(2) The repeals and revocations effected by paragraph (1) are subject to Part 3 of Schedule 4.

Signed by authority of the Secretary of State for Transport

5th July 2012

*Richard Bennett*  
Head of Maritime Commerce and Infrastructure Division  
Department for Transport

## SCHEDULE 1

Article 4

### HARBOUR LIMITS

1. So much of the natural harbour at Poole as is situated below the level of high water and enclosed by imaginary straight lines—

- (a) across the harbour entrance, commencing at a point on the Sandbanks peninsula (reference point latitude 50° 40.989' north longitude 1° 56.909' west)(a) and terminating at a point on the Studland peninsula (reference point latitude 50° 40.766' north longitude 1° 57.015' west);
- (b) in the vicinity of the confluence of the rivers Trent and Frome, commencing at a point on the north side of the Wareham channel (reference point latitude 50° 42.560' north longitude 2° 04.745' west) and terminating at a point on the south side of that channel (reference point latitude 50° 40.607' north longitude 2° 04.435' west);

and by the level of high water within the area so enclosed, including all adjoining creeks, bays and inlets to the extent that they are situated below the level of high water.

2. All docks, marinas and other natural or artificial watered areas navigable by seagoing vessels which adjoin the natural harbour described in paragraph 1 (other than those parts of the rivers Trent and Frome which lie beyond the lines mentioned in that paragraph), including all such areas which are separated from the natural harbour by lock gates, sluices or other moveable devices through which seagoing vessels may pass, whether or not the same are in existence at the date of the coming into force of this Order.

3. The seaward area, that is, so much of the sea as is situated below the level of low water and bounded on its seaward sides by imaginary straight lines—

- (a) commencing at a point near Flaghead Chine (reference point latitude 50° 41.867' north longitude 1° 55.522' west), extending in a south south-easterly direction and terminating at reference point latitude 50° 39.069' north longitude 1° 54.860' west;
- (b) commencing at reference point latitude 50° 39.069' north longitude 1° 54.860' west, extending in a westerly direction and terminating at reference point latitude 50° 39.069' north longitude 1° 55.465' west;
- (c) commencing at reference point latitude 50° 39.069' north longitude 1° 55.465' west, extending in a north-westerly direction and terminating at a point on Studland Peninsular (reference point latitude 50° 40.242' north longitude 1° 56.907' west);

and on its landward side by the level of low water within the area so enclosed and by the imaginary line referred to in paragraph 1(a).

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(a) The reference points in this Schedule are given in accordance with the WGS (World Geodetic System) 84.

## PURPOSES FOR WHICH BYELAWS MAY BE MADE

1. Regulating the use, operation and superintendence of the harbour and any works and facilities in the harbour.
2. Regulating the admission to, and the movement within, and the departure of vessels from the harbour or the removal of vessels, and for the good order and government of vessels whilst within the harbour.
3. Regulating the shipping and unshipping, landing, carrying, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour.
4. Regulating the embarkation of persons on, or the disembarkation from, vessels in the harbour.
5. Regulating the navigation, berthing, mooring and anchoring of vessels within the harbour and their speed and manner of navigation, the use of engines and the lights and signals to be exhibited or made by, or for the benefit of vessels using, navigating or mooring within the harbour.
6. Regulating the use of tugs within the harbour.
7. Requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels and otherwise within the harbour.
8. Preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property (including aids to navigation), or danger or injury to persons within the harbour.
9. Regulating the conduct of all persons in the harbour not being—
  - (a) members of a police force or officers; or
  - (b) servants of the Crown; or
  - (c) members of a fire brigade whilst in the exercise of their duties as such.
10. Regulating the placing, maintenance and use of moorings within the harbour.
11. Preventing and removing obstructions or impediments within the harbour.
12. Prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour.
13. Preventing the leaving or disposal of any waste matter except at places, or in a manner, prescribed by the Commissioners.
14. Regulating the presence and keeping of vessels within the harbour.
15. Regulating the careening, breaking, maintenance and repair of vessels and the carrying out of any other works in relation to vessels within the harbour.
16. Regulating the use of ferries (including the vehicle and passenger chain ferry operated by the Bournemouth and Swanage Motor Road and Ferry Company between Sandbanks and South Haven) within the harbour.
17. Regulating the landing or taking off of aircraft (including seaplanes) in the harbour.
18. Prescribing the lights and signals to be exhibited or made—
  - (a) by vessels aground within the harbour;
  - (b) by vessels or other devices used for marking obstructions within the harbour; and

(c) at the entrance to any dock or at any wharf, pier or other work for assisting the navigation of vessels within the harbour.

**19.** Regulating or prohibiting the fishing for or the taking of marine creatures of any type and by whatever means, from any installation or structure of any kind within the harbour, or from any vessel within the harbour, where such fishing or taking interferes with the operation of, or the safety of navigation in, the harbour.

**20.** Regulating or prohibiting the digging for bait in the harbour where such digging may endanger any structure or cause obstruction or danger to navigation.

**21.** Regulating in the harbour the use of yachts, sailing boats, rowing boats, pleasure craft and other small craft.

**22.** Providing for the registration of passenger boats and those engaged in navigating passenger boats in the harbour.

**23.** Regulating or prohibiting the use in the harbour of personal water craft.

**24.** Regulating the holding of regattas and other public events in the harbour.

**25.** Regulating or prohibiting in the harbour diving, surfing, swimming, water skiing and other recreational activities or pursuits of whatever nature but not so as to prevent the use for navigation of the vessels referred to in paragraph 21.

**26.** Regulating the launching of vessels and the use of slipways and landing places within the harbour.

**27.** Prohibiting persons working or employed in or entering the harbour, or any part of the harbour, from smoking in the harbour.

**28.** Regulating or preventing the use within the harbour, and within any vessels within the harbour of fires, lights, tobacco, fireworks or any other substance, equipment, tools or appliances which the Commissioners consider involve a risk of fire, explosion or chemical reaction.

**29.** Prohibiting the use of or regulating the use, movement, speed, placing, loading, fuelling, unloading, driving and parking of vehicles (including railway locomotives and trains) within the harbour.

**30.** Requiring the reporting of accidents and of other incidents giving rise to the risk of death or injury, or damage to property, occurring within the harbour.

**31.** Regulating or prohibiting the carrying on of trading or commercial activities within the harbour.

**32.** Regulating the exercise of the powers vested in the harbourmaster.

**33.** 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 harbourmaster, and for authorising the harbourmaster to take such action as may be reasonably required in default of compliance with any such condition, control or direction.

**34.** Regulating the control of animals in the harbour.

**35.** For the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or archaeological or geological or physiographical features in the harbour and all other natural features.

**36.** For the purposes specified in section 83 of the 1847 Act.

## AMENDMENT OF POOLE HARBOUR REVISION ORDER 2001

The 2001 Order is amended as follows—

1. For paragraph (1) of article 3 (Incorporation of the Commissioners' Clauses Act 1847) substitute—

“(1) Sections 41 to 47, 53, 60 and 99 to 101 of the 1847 Act are hereby incorporated with, and form part of, this Order except where the same are inconsistent with or are varied by this Order.”,

and revoke paragraph (4) of that article.

2. In article 4 (Constitution of Commissioners), after “subject to articles 8 and 9 below” insert “and to paragraph A1(5) of Schedule 2 to this Order”.

3. In article 7 (Appointment of Commissioners and terms of office), in paragraph (4), after “paragraphs” insert “A1(5),”.

4. In article 7, after paragraph (6), insert—

“(6A) A person who is or who has been Chairman shall not be eligible to hold office as a Commissioner for more than twelve years.”

5. In article 10 (Casual vacancies), at the end of paragraph (3), insert “or to a Chairman whose term of office as Commissioner has been extended under paragraph A1(5) of Schedule 2 to this Order”.

6. In Schedule 1 (Form of declaration by Commissioners), for “1756 to 2001” in both places where that expression occurs substitute “1756 to 2012”.

7. In Schedule 2 (Provisions applying to Commissioners), before paragraph 1, insert—

**“Chairman of Commissioners**

**A1.**—(1) There shall be a Chairman of the Commissioners who shall be elected in accordance with sub-paragraph (2).

(2) The Chairman shall be elected by the Commissioners referred to in article 4(1) from amongst the Commissioners referred to in article 4(1)(c).

(3) Every Chairman appointed under sub-paragraphs (1) and (2) shall, unless he resigns or is removed from his office as Chairman, or ceases to be a Commissioner, hold office as Chairman from and including the meeting at which he is chosen for a period expiring on the date of the meeting of the Commissioners held on or next after 31st October in the third year after the year current at the date of his appointment.

(4) At the meeting of the Commissioners held on the date on which the outgoing Chairman ceases to hold office the Commissioners present at the meeting shall, before proceeding to any other business, appoint a new Chairman.

(5) On a casual vacancy occurring in the office of Chairman, a new Chairman shall be elected by the Commissioners referred to in article 4(1) from amongst the Commissioners referred to in article 4(1)(c) at a meeting held as soon as practicable after the vacancy occurs.

(6) A Commissioner appointed under this paragraph to fill a casual vacancy in the office of Chairman shall, unless he resigns that office or ceases to be a Commissioner, hold that office during the remainder of the term for which the Chairman whom he replaced was appointed.

(7) If but for sub-paragraph (6) a Chairman's term of office as a Commissioner would have expired before his term of office as Chairman, his term of office as a Commissioner

shall be extended until the date upon which his term of office as Chairman expires or (if earlier) the date upon which he otherwise ceases to be the Chairman.

(8) Nothing in sub-paragraph (7) shall prevent the removal of the Chairman under paragraph 9 of this Schedule.”.

**8.** In Schedule 2, paragraph 9(2), at the beginning insert “Subject to paragraph 10(2) of this Schedule”.

**9.** In Schedule 2, in paragraph 9(2), after “from his office as a Commissioner” insert “(unless the resolution is passed during the extended term of office of a Chairman as a Commissioner having effect under paragraph A1(6) of this Schedule)”.

**10.** In Schedule 2, after paragraph 9, insert—

**“Further provisions as to removal of Commissioners, etc.**

**9A.**—(1) The Commissioners shall not pass any resolution under paragraph 8 or 9 of this Schedule in relation to a person unless they have complied with the conditions set out in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) notice has been given to the person in accordance with sub-paragraph (3);
- (b) a period of 28 days from the giving of the notice has expired; and
- (c) the person has been allowed to resign or to make representations to the Commissioners in response to the notice in writing or (if the person so wishes) in person.

(3) Any notice under sub-paragraph (2)(a)—

- (a) shall state the reasons for which the Commissioners are minded to pass the resolution; and
- (b) shall inform the recipient of the rights conferred by sub-paragraphs (2)(c) and (8).

(4) A person to whom a resolution under paragraph 8 or 9 of this Schedule relates shall not be counted for the purpose of determining whether the meeting at which the resolution is considered is quorate.

(5) Article 57 (Notices) of the Poole Harbour Revision Order 2012 shall apply to any notice under sub-paragraph (2)(a).

(6) Subject to sub-paragraph (7) following the passing of any resolution under paragraph 8 or 9 of this Schedule, the Commissioners shall take reasonable steps to publicise the resolution and the reasons for it.

(7) Nothing in sub-paragraph (6) shall authorise the Commissioners to make any statement or disclose any information so as to contravene any enactment, agreement or rule of law.

(8) A Commissioner or the Chairman who is aggrieved by any resolution under paragraph 8 or 9 of this Schedule may appeal within 28 days to a tribunal consisting of 3 persons (not being past or present Commissioners) appointed by the Commissioners whose decision shall be binding on the Commissioners.”.

**11.**—(1) In Schedule 2, paragraph 10, renumber the existing paragraph as 10(1) and insert afterwards—

“(2) Notwithstanding paragraph 9(2) of this Schedule the Commissioners if they think fit may pass a combined resolution under paragraphs 9 and 8 of this Schedule removing the Chairman from his position as such and declaring his office as a Commissioner to be vacant.”.



## SCHEDULE 4

Article 61

### REPEAL, REVOCATION AND SAVINGS PROVISIONS

#### PART 1

##### Repeals

<i>Chapter (1)</i>	<i>Short title (2)</i>	<i>Extent of repeal (3)</i>
1891 c.clix	Poole Harbour Act 1756	The whole Act
1894 c.cxii	Pier and Harbour Order Confirmation (No. 3) Act 1891	Poole Harbour Order 1891
1895 c.lxx	Pier and Harbour Orders Confirmation (No. 3) Act 1894	Poole Harbour Order 1894
1914 c.clv	Poole Harbour Act 1895	The whole Act
1923 c.vi	Poole Harbour Act 1914	The whole Act except sections 20, 21, 22 and 23
1925 c.lix	Pier and Harbour Order Confirmation (No. 1) Act 1923	Poole Harbour Order 1922
	Poole Harbour Act 1925	The whole Act

#### PART 2

##### Revocation

S.I. 2001/2820	Poole Harbour Revision Order 2001	Article 6(2) In article 7, the word “or” in paragraph (5)(b) and the whole of paragraph (5)(c)
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#### PART 3

##### Savings and transitional provisions

1. In this Part, “the former legislation” means the Acts and Orders mentioned in Parts 1 and 2 of this Schedule repealed or revoked by article 61(1).

2. Where an Act in Part 1 of this Schedule is repealed subject to exceptions, and a provision included in the repeal is relevant for the interpretation of an excepted provision, the repeal shall not affect the interpretation of the excepted provision.

3. The Commissioners may continue and maintain any works authorised by the former legislation.

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

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

**6.** References in this Order to things done, left undone, suffered, or occurring in the past shall be construed as including reference to things done, left undone, suffered or occurring before the date of the coming into force of this Order.

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

**8.** Any byelaws made by the Commissioners under the former legislation and in force on the date of the coming into force of this Order shall continue in force as though they had been made under this Order until they are revoked pursuant to this Order.

## **EXPLANATORY NOTE**

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

This Order confers powers on the Poole Harbour Commissioners for the management and regulation of Poole Harbour, and makes other connected provisions. The Order amends the Poole Harbour Revision Order 2001 so as to make new arrangements for the appointment of the Chairman of the Commissioners. The Order also repeals and revokes various other enactments relating to Poole Harbour, with savings and transitional provisions.

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