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STATUTORY INSTRUMENTS

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**2021 No. 130**

**The Fowey Harbour Revision Order 2021**

**PART 2**

**GENERAL DIRECTIONS AND SPECIAL DIRECTIONS**

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

4.—(1) The Commissioners may, in accordance with the requirements of article 5 of this Order, give a direction for—

- (a) the ease, convenience or safety of navigation,
- (b) the safety of persons,
- (c) the protection of property, flora or fauna, or
- (d) the ease, convenience or safety of harbour operations ashore,

within the harbour.

(2) A direction under this article may apply—

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

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

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

(4) The Commissioners must keep and make available for inspection at their main office and on their website a public register of all in force general directions<sup>(1)</sup>.

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

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

- (a) give notice in writing of the proposal and a plan of the area over which the proposal applies to the “designated consultees” them being;
  - (i) the Chamber of Shipping,
  - (ii) the Royal Yachting Association,
  - (iii) the Fowey Port User Group, and

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(1) The public register of all in force general directions may be inspected during office hours at the Commissioners main office at Albert Quay, Fowey PL23 1AJ and available on [www.foweyharbour.co.uk](http://www.foweyharbour.co.uk).

- (iv) such other persons or organisations as they consider appropriate for the purposes of the application of this provision,
  - (b) place a notice of the proposal on the Commissioners' website and in prominent locations at the Commissioners' main office on the same date as the notice given in accordance with sub-paragraph (a) and keep that notice on display for a minimum of 6 weeks,
  - (c) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks beginning with the date of the notices given in accordance with sub-paragraphs (a) and (b) for written representations to be made by the designated consultees and any other persons to the Commissioners regarding the proposal,
  - (d) have regard to all representations made during consultation,
  - (e) give notice in writing to the designated consultees and to those other persons that have provided a consultation response, following consultation as to whether the Commissioners propose to proceed with the proposal and, if so, specifying whether they are making any modifications to the proposal and their reasons for so doing, and,
  - (f) if the Commissioners propose to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days beginning with the date of the notice given in accordance with sub-paragraph (e), or such longer period as the Commissioners may specify.
- (2) Where the Commissioners have complied with paragraph (1), they may proceed to give, amend or revoke a general direction if—
- (a) none of the designated consultees have made representations against the proposal,
  - (b) none of the designated consultees which made representations against the proposal have confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(f), or
  - (c) where a designated consultee has maintained an objection in accordance with paragraph (1)(f), the requirements of paragraph (3) have been complied with.
- (3) Where a designated consultee has confirmed in writing to the Commissioners that they maintain their objection to a proposal—
- (a) the issue must be referred to an independent person ("the adjudicator") appointed—
    - (i) by agreement between the Commissioners and each designated consultee maintaining an objection in accordance with paragraph (1)(f) ("the parties"), or
    - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties,
  - (b) so far as is reasonably practicable within 12 weeks beginning with the date of the referral, the adjudicator must—
    - (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing, and
    - (ii) make a written report to the parties with findings and recommendations on the issue, and
  - (c) the Commissioners must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator's report (but they are not bound to give effect to any recommendations) and, once they have decided, must give notice in writing to the designated consultees and to any other person that provided a consultation response of their decision and the reasons for that decision.

(4) Except as otherwise provided for in paragraph (3), the adjudicator may determine the procedure for the making of representations and the conduct of any hearing.

(5) The costs incurred by the adjudicator and the parties from a referral under paragraph (3) are to be paid by one of more of the parties as the adjudicator may direct.

(6) If the Commissioners wish to exercise the power to give, amend or revoke a general direction in a form materially different from both the form notified to the designated consultees under paragraph (1)(e), and where paragraph (3) applies the form recommended by the adjudicator under paragraph (3)(b), they must proceed, as if the proposal is a new proposal to which paragraph (1) applies.

(7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety, or safety of persons, the Commissioners propose to give or amend a general direction—

- (a) in an emergency, or
- (b) relating to an intended activity or operation within the harbour which—
  - (i) is expected to commence within 16 weeks of the Commissioners having been notified or otherwise becoming aware of the intended activity or operation,
  - (ii) is to last less than 28 days, and
  - (iii) the Commissioners consider that the giving or amending of a general direction in relation to the intended activity or operation is required, taking into account other activities or operations in the harbour which may be affected.

(8) Where the Commissioners proceed to give or amend a general direction in accordance with paragraph (7), they must—

- (a) as soon as is reasonably practicable give notice of the direction or amendment to those persons who would have been designated consultees had paragraph (1)(a) applied, and
- (b) if the direction or amendment is intended to continue in force for more than 12 weeks, apply the procedure under paragraphs (1)(c) to (f) and (2) to (6) to the direction or amendment with the following modifications—
  - (i) a reference to the ‘proposal’ in those paragraphs is to be read as a reference to the direction or amendment, and
  - (ii) in paragraph (1)(c), for “sub-paragraphs (a) and (b)” substitute “paragraph (8)(a)”, and
  - (iii) a reference to the Commissioners ‘proceeding’ with a proposal is to be read as a reference to the Commissioners determining that the direction or amendment should remain in force.

### **Publication of general directions**

6.—(1) Subject to paragraph (4), the Commissioners must publish a notice of the giving, amendment or revocation of a general direction as soon as reasonably practicable on one occasion in a newspaper circulating in the area of the harbour and electronically on the Commissioners’ website for the period of 28 days from the date of publication of the notice in the newspaper.

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

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

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

### Special directions

7.—(1) The harbour master may give a special direction in respect of a vessel anywhere in the harbour for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under a general direction,
- (b) regulating or requiring the movement, anchorage, berthing, mooring or unmooring of the vessel,
- (c) regulating the loading, discharging, storing and safeguarding of its cargo, fuel, water or stores, and the dispatch of its business at the harbour premises,
- (d) specifying the precautions to be taken in respect of apparatus, machinery and equipment,
- (e) prohibiting or restricting the use of fires or lights,
- (f) regulating the use of ballast,
- (g) requiring the removal of the vessel from any part of the harbour if the vessel—
  - (i) is on fire,
  - (ii) is in such condition as to be liable to become immobilised or waterlogged, to sink or to constitute a danger to life or property,
  - (iii) is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other vessels or persons or the dispatch of business in the harbour, or
  - (iv) needs to be removed to enable maintenance or repair work to be carried out to the harbour premises,
- (h) requiring the vessel be removed to a place outside the harbour if such removal is considered by the harbour master to be necessary in order to avoid danger to life (including wildlife) or to property.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) The harbour master may revoke or amend a special direction.

### Failure to comply with directions

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

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

### Enforcement of directions

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

(2) If there is no one on board a vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with, provided that the powers of this paragraph shall not be exercised—

- (a) in relation to a vessel other than a lighter unless, after reasonable inquiry has been made, the master cannot be found, or
- (b) in relation to a lighter unless it is obstructing or interfering with navigation.

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

**Master’s responsibility in relation to directions**

**10.** The giving of a general or special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to 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.

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

**11.** Any harbour direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Commissioners in relation to the harbour undertaking and in force immediately on or before the date on which this Order comes into force, shall, notwithstanding the amendments, revocations and repeals set out in articles 13, 14, 18, 19 and in the Schedule to this Order, continue to have effect.