
 STATUTORY INSTRUMENTS

200X No.

HARBOURS, DOCKS, PIERS AND FERRIES

The Yarmouth (Isle of Wight) Harbour Revision Order 200X

Made - - - - 200X

Coming into force - - 200X

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Whereas the Yarmouth (Isle of Wight) Harbour Commissioners have applied for a harbour revision order under section 14 of the Harbours Act 1964(a).

And whereas [no objections have been made to the application] [objections to the application made pursuant to paragraph 3(2)(a) of Schedule 3 to the said Act have been withdrawn.]

Now, therefore, the Secretary of State for Transport (being the appropriate Minister under subsection (7) of the said section 14(b)), in exercise of the powers conferred by that section and now vested in him(c) and of all other powers enabling him in that behalf, hereby makes the following Order: —

PART I

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Yarmouth (Isle of Wight) Harbour Revision Order 200x and shall come into force on []200x

(2) The Yarmouth (Isle of Wight) Harbour Orders 1931 to 2001 and this Order may be cited together as the Yarmouth (Isle of Wight) Harbour Orders 1931 to 200x.

Interpretation

2.—(1) In this Order —

“the 2001 Order” means the Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001(d);

“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;

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

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

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

“the harbour map” means the map prepared in triplicate, signed by the Head of Ports Division of the Department for Transport and marked “Yarmouth (Isle of Wight) Harbour Revision Order 200x”, 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 his deputies and assistants, and any other person for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of harbourmaster;

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

(a) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4 and 14, and by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1.

(b) For the definition of “the Minister” (mentioned in section 14(7)) see section 57(1).

(c) S.I. 1981/238 and S.I.1997/2971.

(d) S.I. 2001/2185.

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

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

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

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

Area of the harbour

3.—(1) The area within which the Commissioners shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964, and within which the powers of the harbourmaster may be exercised, shall be the area described in Schedule 1 to this Order 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 referred to in paragraph (1) above, and set out in Schedule 1 to this Order, and the boundaries shown on the harbour map, the said description shall prevail over the harbour map.

PART II

HARBOUR REGULATION

Directions to vessels, etc.

General directions as to use of harbour, etc.

4.—(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;
- (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) above the Commissioners may give general directions for any of the purposes set out in Schedule 2.

(3) A general direction may apply —

- (a) to all vessels or to a class of vessels designated, or the designation of which is provided for, in the direction; or
- (b) to the whole of the harbour or the approaches or to a part designated, or the designation of which is provided for, in the direction; or
- (c) at all times or at times designated, or the designation of which is provided for, in the direction, and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c) above.

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

Procedures for making general directions

5. Schedule 3 shall have effect.

Special directions to vessels

6.—(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 —
 - (i) a general direction; or
 - (ii) any provision of this Order; or
 - (iii) any other enactment applicable to the harbour or to the Commissioners;
- (b) regulating or requiring the movement, berthing, mooring or unmooring of the vessel;
- (c) requiring the removal from any part of the harbour of 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 thereof by other vessels or persons or the carrying on of business therein; or
 - (iv) its removal is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent thereto;
- (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, or to any part of the harbour such as is referred to in paragraph (2) below;
- (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) for limiting the speed of the vessel;
- (h) as to the use of the motive power of the vessel;
- (i) prohibiting or restricting the use of fires, lights or barbeques;
- (j) as to the discharge or use of ballast.

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

(3) 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) above.

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

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

Failure to comply with directions

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

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

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

Enforcement of special directions

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

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

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

Master's responsibility in relation to directions

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

Harbour water taxi services

Restriction of harbour water taxi services

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

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

Licensing of harbour water taxi services

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

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

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

Further provisions as to licences

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

- (a) conditions as to the hours of operation of the harbour water taxi service (including requirements as regards frequency of service);
- (b) conditions as to the fares levied by the licensed operator of the harbour water taxi service;
- (c) conditions requiring the maintenance of an insurance policy in relation to the vessels used for the purposes of the harbour water taxi service; and
- (d) conditions for ensuring compliance with requirements made by or under any enactment relating to the harbour water taxi service or to the Commissioners, or to the harbour.

(2) A licence shall have effect for such period (which shall be specified in the licence) as the Commissioners may determine.

(3) An application for a licence —

- (a) shall be made in writing to the Commissioners;
- (b) shall include proposals for the hours of operation and the fares to be levied; and
- (c) shall contain such information (including without prejudice to the generality of the foregoing information about the applicant and the vessels to be used), and shall be accompanied by such documents, as the Commissioners shall reasonably require.

(4) If the Commissioners decide to grant a licence they shall give notice of their decision to the applicant.

(5) If within six months from the date of the making of an application under paragraph (3) the Commissioners do not notify to the applicant their decision whether to grant a licence, they shall be deemed to have refused the application.

(6) The Commissioners may charge a reasonable fee for the grant of a licence.

(7) Where the Commissioners refuse to grant a licence which has been applied for they shall give reasons in writing for their refusal.

(8) Where the Commissioners grant a licence upon terms or conditions, they shall give reasons in writing for the terms and conditions imposed or the modifications required.

Appeals in respect of licences

13.—(1) Where —

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

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

(2) An appeal under paragraph (1) above shall be made by notice in writing, stating the grounds of the appeal.

(3) A person who appeals to the Secretary of State under paragraph (1) above shall at the same time send a copy of his statement of appeal to the Commissioners and the Commissioners shall as soon as practicable thereafter furnish the Secretary of State with all relevant documents, and may within 28 days from the receipt of the statement of appeal furnish the Secretary of State with their observations on the appeal.

(4) On an appeal under paragraph (1) above the Secretary of State may confirm, vary or revoke the decision appealed against and may require any consequential amendments to be made, including amendment of the terms and conditions.

(5) The Commissioners shall give effect to any decision or requirement given or made by the Secretary of State under paragraph (4) above.

Moorings

Moorings provided by Commissioners

14.—(1) The Commissioners may provide, place, lay down, maintain, renew, use, have or remove such moorings within the harbour: —

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

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

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

Moorings provided by others

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

(2) A licence under this article: —

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

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

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

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

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

Offences as to moorings

16. Any person who —

- (a) intentionally obstructs any person acting under the authority of the Commissioners in setting out moorings;

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

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

Moorings – enforcement provisions

17.—(1) If any person commits an offence under article 7 in respect of any non-compliance with a requirement made under paragraph 8 of Schedule 2, or any offence under article 16(c), the Commissioners may remove the mooring in question and recover from that person the expenses incurred in doing so.

(2) If any person commits an offence under article 7 in respect of any non-compliance with a requirement made under paragraph 8 of Schedule 2, or any offence under article 16(d) or (e), the Commissioners may at any time after the expiration of the period of 7 days from the date of that offence—

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

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

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

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

Other provisions

Power to designate parts of harbour, etc.

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

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

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

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

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

(5) Nothing in this article shall authorise the permanent or temporary stopping up or diversion or other interference with any public right of way over land (not being land which is covered by water at any state of the tide) within the harbour.

Fuel bowsers

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

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

(3) A licence under this article —

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

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

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

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

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

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

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

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

PART III
MISCELLANEOUS AND GENERAL

Information for purpose of landing charges

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

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

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

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

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

(6) Any person who without reasonable excuse fails to comply with any requirement made under paragraph (1) above, or who in compliance with such a requirement provides any information which he knows to be false, or recklessly provides information which is false in any material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Boarding of vessels

21.—(1) Any duly authorised officer of the Commissioners may, on producing if so required his authority, 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 or any general or special direction, including the enforcement thereof; or
- (b) to prevent or extinguish fire;

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

Obstruction of officers

22.—(1) Any person who —

- (a) intentionally obstructs or threatens an officer of the Commissioners acting in pursuance of this Order or in pursuance of any byelaw, direction or requirement made 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 give such an officer any information (including his name and address) which the officer may require for the purpose of the performance of his functions,

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

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

Notices

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

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

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, his last known address at the time of service.

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

- (a) in the case of a notice or document to be served on any person as having an interest on, or as the occupier of, any land, it may be served by —
 - (i) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (ii) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land;
- (b) in the case of a notice or document relating to a vessel (including a wreck), it may be served by exhibiting it in a conspicuous position on or near the vessel, or handed to a member of the crew,

Provided that this sub-paragraph shall not apply if in any case it would not be reasonably practicable to exhibit the notice or document in such manner, or if the notice or document would not be likely to be seen if it were so exhibited;

- (c) in the case of any other notice or document (including one falling within the proviso to paragraph (5)(b) above), it may be served by displaying it at the office of the harbourmaster for the period of its duration.

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

Execution of documents

24.—(1) Section 36A of the Companies Act 1985 shall apply to the execution of documents by the Commissioners as though they were a company within the meaning of section 735(1) of that Act.

(2) The said section 36A as so applied shall have effect —

(a) 1978 c.30.
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- (a) as though for references to a director there were substituted references to a Commissioner;
- (b) as though for references to two directors of the company there were substituted references to two Commissioners; and
- (c) as though for references the secretary of the company there were substituted references to the Chief Executive of the Commissioners or some other person authorised under paragraph 20 of Schedule 2 to the 2001 Order to act instead of the Chief Executive.

Crown Rights

25.—(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) above may be given unconditionally, or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Saving for Trinity House

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

Amendment of 2001 Order

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

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

(3) In Schedule 2, for the expression “article 4(2)(a)” wherever it occurs there shall be substituted the expression “article 4(1)(a)”.

Repeal and revocation of enactments, etc.

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

- (a) the provision of the Act referred to in columns (1) and (2) of Part I of Schedule 5 to this Order shall be repealed to the extent specified in column (3) of that Part; and
- (b) the provisions of the orders referred to in columns (1) and (2) of Part II of Schedule 5 to this Order shall be revoked to the extent specified in column (3) of the Part.

(2) The repeals effected by paragraph (1) above shall be subject to Part III of Schedule 5 to this Order.

Signed by authority of the
Secretary of State for Transport
[Date]

Head of Ports Division
Department for Transport

SCHEDULES

SCHEDULE 1

Article 3

HARBOUR LIMITS

(1) So much of the Solent as is situated below the level of high water and bounded on its seaward sides by imaginary straight lines –

- (a) commencing at a point 50° 42.38' N, 01° 31.00' W, and terminating at a point 50° 42.57' N, 01° 31.00' W;
- (b) commencing at a point 50° 42.57' N, 01° 31.00' W and terminating at a point 50° 42.86' N, 01° 29.88' W;
- (c) commencing at a point 50° 42.86' N, 01° 29.88' W and terminating at a point 50° 42.38' N, 01° 29.82' W;

and on its landward side by the level of high water within the area so enclosed, and by the imaginary line referred to in paragraph (2)(a) below.

(2) So much of the natural harbour at Yarmouth (Isle of Wight) and of the river Yar as is situated below the level of high water and enclosed –

- (a) by an imaginary straight line drawn across the harbour entrance, commencing at a point at the eastern end of the west breakwater (reference point 50° 42.39' N, 01° 29.90' W) and terminating at a point at the northern end of the Inner Pier (reference point 50° 42.39' N, 01° 29.35' W); and
- (b) by the northern side of the road bridge known as the Causeway;

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.

(3) So much of the tidal inlet (the “tidal inlet”), sometimes known as the lagoon, lying to the west of the harbour and to the north of the Yarmouth to Freshwater road and of the creek (“the creek”) leading from the harbour into the tidal inlet as is situated below the level of high water, the tidal inlet and the creek being at the date of the coming into force of this Order owned partly by the Commissioners and partly by others.

(4) All docks, marinas and other natural or artificial watered areas navigable by seagoing vessels which adjoin the portion of the river Yar described in paragraph (2) above (other than those parts of the river Yar which lie upstream of the bridge mentioned in paragraph (2)(b)), including all such areas which are separated from the river 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.

PURPOSES FOR WHICH GENERAL DIRECTIONS MAY BE MADE

Navigation, control of vessels and moorings

- 1 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.
- 2 Securing that vessels move only at certain times or during certain periods.
- 3 Limiting the speed of vessels.
- 4 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 article 4(1)(b) above; and
 - (ii) entry into or navigation within any designated fairway or channel during any temporary obstruction thereof.
- 5 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 shall prevent the entry into the harbour or the approaches of any vessel seeking refuge from stress of weather.
- 6 Generally 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.
- 7 Regulating the navigation, berthing 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.
- 8 Making requirements as to the mooring of vessels within the harbour (whether at moorings licensed under article 14 or licensed under article 15, or otherwise).
- 9 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.
- 10 Prescribing the action to be taken in relation to vessels which have become adrift, or sunk, or run aground.

Health, safety and protection of property

- 11 So far as is necessary for the safety of navigation, requiring or regulating the use of tugs in relation to a vessel.
- 12 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.

13 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.

14 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.

Use of the harbour (including goods, obstructions and waste)

15 Regulating the use, operation and superintendence of the harbour and any works and facilities in the harbour.

16 Regulating the shipping and unshipping, landing, carrying, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the harbour.

17 Preventing and removing obstructions or impediments within the harbour.

18 Prohibiting or regulating the discharge or deposit of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into the harbour.

19 Preventing the leaving or disposal of any waste matter except at places, or in a manner, prescribed by the Commissioners.

20 Regulating the use of ferries and water taxis.

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

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

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

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

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

26 Regulating the landing or taking off of aircraft (including seaplanes) in the harbour.

27 Regulating or prohibiting in the harbour diving, surfing, swimming, water skiing and other recreational activities or pursuits of whatever nature.

28 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.

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

Use of equipment and maintenance

30 Regulating the use of any equipment (including engines) forming part of or carried on the vessel.

31 Requiring the use of silencers or other similar apparatus, and the control of noise generally on vessels and otherwise within the harbour.

32 Regulating the careening, breaking, maintenance and repair of vessels and the carrying out of any other works in relation to vessels within the harbour.

Passengers and other persons

33 Regulating the embarkation of persons on, or the disembarkation from, vessels in the harbour.

34 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.

35 Prohibiting persons working or employed in or entering the harbour, or any part thereof, from smoking therein.

Environmental protection

36 Making regulations 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.

Miscellaneous

37 Prohibiting the use of or regulating the use, movement, speed, placing, loading, fuelling, unloading, driving and parking of vehicles within the harbour.

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

39 Regulating the control of animals in the harbour.

Powers of the harbourmaster

40 Regulating the exercise of the powers vested in the harbourmaster.

41 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 him to take such action as may be reasonably required in default of compliance with any such condition, control or direction.

42 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 the foregoing paragraphs of this schedule.

GENERAL DIRECTIONS: PUBLICATION AND CONSULTATION, ETC.

1 In this Schedule –

“the consultation period” means the period referred to in paragraph 4;

“the objectors” means any relevant consultees who make an objection under paragraph 6(c);

“the relevant consultees” means —

- (a) every advisory body established under article 15 of the 2001 Order;
- (b) if the giving, amending or revoking of the general direction could reasonably be considered to affect in any material respect the holders of licences granted by the Commissioners under article 15 (Mooring provided by others) of this Order, every such licence holder;
- (c) any bodies established on a national basis for purposes that include as a main objective the representation of the interests of owners or operators of leisure or commercial vessels of a type that (i) are likely to berth, moor or operate within the harbour limits (or are capable of doing so) and (ii) could reasonably be considered to be affected in any material respect by the giving, amending or revoking of the general direction (including without prejudice to the generality of the foregoing the Royal Yachting Association, the British Marine Federation, the Marine and Fisheries Agency or the successors of any of these bodies);
- (d) if the giving, amending or revoking of the general direction could reasonably be considered to affect in any material respect any particular business or trade carried on within the harbour limits or any operator of a scheduled ferry service to or from the harbour, any local body established for the purpose of representing the interests of persons carrying on that business or trade or the operator of that ferry service, as the case may be; and
- (e) such other persons or bodies not falling within sub-paragraph (a), (b),(c) or (d) above as the Commissioners may consider would be reasonably likely to be affected in any material respect by the giving, amending or revoking of the general direction.

2 Before giving, amending or revoking a general direction the Commissioners shall, except in an emergency —

- (a) publish notice of their intention to do so on their website and once in a local newspaper circulating in the area of the harbour;
- (b) display at the harbour office a copy of the direction which is proposed to be given, amended or revoked, as the case may be; and
- (c) serve a copy of the notice on the relevant consultees.

3 The notices published and served under paragraph 2 shall—

- (a) state a place where copies of the proposed direction, and of any existing general direction which is proposed to be revoked or amended, may be inspected and bought, and the price thereof;
- (b) state that representations may be made to the Commissioners in writing during the period referred to in paragraph 4 below.

4 During the period of 84 days following publication of the notice under paragraph (2)(a) or such longer period as may be specified in the notice, the Commissioners shall consult with the relevant consultees.

5 The Commissioners shall not give, amend or revoke the general direction until they have considered all such representations as are made by the relevant consultees during the consultation period.

6 As soon as reasonably practicable after the expiry of the consultation period, the Commissioners shall give notice to all relevant consultees who have made representations during that period —

- (a) stating whether the Commissioners intend to give, amend or revoke the general direction, and responding to any such representations;
- (b) specifying whether they intend to make any modifications to the original proposal; and
- (c) if the Commissioners intend to give, amend or revoke the direction, informing those consultees of their right to object to the proposal within 28 days from the date of the notice or such longer period as may be specified in the notice.

7 Where none of the relevant consultees have made representations in respect of the proposal during the consultation period or, having made representations, do not object under paragraph 6(c) to the proposal, the Commissioners may give, amend or revoke the general direction.

8 (a) Subject to paragraph 10, where any relevant consultee objects to a proposal under paragraph 6(c), the following procedures shall have effect unless the Commissioners decide not to proceed with the giving, amending or revoking of the direction.

- (b) The issue shall not later than 21 days after the expiration of the period referred to in paragraph 6(c) be referred to three independent persons (“the adjudicators”) to be agreed between the Chairman of the Commissioners and the Chairmen of every advisory body established under article 15 of the 2004 Order or, failing agreement, appointed by the President of the Institute of Arbitrators. No person shall act as an adjudicator unless that person has consented in writing to the appointment and delivered the signed consent to the Commissioners.
- (c) The adjudicators shall allow a reasonable opportunity for the Commissioners and the objectors to make representations to, or be heard by, the adjudicators and shall then make a report in writing containing their findings and reasoned recommendations on the issue to the Commissioners, a copy of which shall also be provided by the adjudicators to the objectors.
- (d) The adjudicators shall use reasonable endeavours to ensure that the steps referred to in paragraph 8(c) are completed within 28 days of their appointment.
- (e) The Commissioners shall not be bound to give effect to the recommendations contained in the report of the adjudicators, but in taking their decision to give, amend or revoke the direction they shall have regard to the report.
- (f) The Commissioners shall give notice to the adjudicators and the objectors of their decision stating the reasons for that decision as soon as reasonably practicable after it has been taken.
- (g) The Commissioners shall reimburse the adjudicators in respect of their reasonable expenses incurred in discharging their functions under this Schedule, but the adjudicators shall not be entitled to any remuneration for their services.
- (h) Subject to paragraph 8(g) the Commissioners and the objectors shall bear their own costs arising under this Schedule.
- (i) The adjudicators shall not be personally liable for anything done by them in accordance with this Schedule.

9 Except as otherwise provided in paragraph 8, the adjudicators may determine the procedure for the making of representations and the conduct of any hearing under that paragraph.

10 If within 21 days after the expiration of the period referred to in paragraph 6(c) written consents from three adjudicators referred to in paragraph 8(b) have not been received by the Commissioners, the provisions of paragraphs 8 and 9 shall not apply and the Commissioners shall take their decision to give,

amend or revoke the direction. In doing so, the Commissioners shall have regard to the objections made by any relevant consultee under paragraph 6(c).

11 Where the Commissioners propose to give or amend a general direction in a form materially different from that notified under paragraph 6 or recommended by the adjudicators under paragraph 8(c), the Commissioners shall proceed as if the proposal were a new proposal; and the provisions of this Schedule shall apply with all necessary modifications to that proposal.

12 Where in an emergency the Commissioners give or amend a general direction without observing the requirements of paragraphs 1 to 9 or 11, they shall inform the relevant consultees as soon as practicable of their proposals for maintaining the direction, and the provisions of those paragraphs shall apply with all necessary modifications to those proposals.

ARTICLES 4, 4A AND 5 OF 2001 ORDER AS SUBSTITUTED AND INSERTED BY
ARTICLE 27

Constitution of Commissioners

- 4(1) As from the effective date the Commissioners shall consist of:-
- (a) eight persons holding office in accordance with this and article 5 (“appointed Commissioners”); and
 - (b) the Chief Executive of the Commissioners.
- (2) Every appointed Commissioner holding office on the effective date shall remain in office until the date upon which he would have ceased to hold office had this Order not been made.
- (3) Appointments of appointed Commissioners after the effective date shall be made by the Commissioners holding office at the time of the appointment having regard to the advice of the appointments panel.
- (4) Each appointed Commissioner shall be a person who appears to the appointments panel and to the Commissioners making the appointment to have special knowledge, experience or ability relevant to the efficient, effective and economic discharge by the Commissioners of their functions.
- (5) Without prejudice to paragraph (4), the appointed Commissioners shall include a person or persons who appears or appear to the appointments panel and to the Commissioners making the appointment or appointments to have special knowledge, experience or ability in accountancy or financial management, coastal environment and the laws relating to England.
- (6) In advising on and making an appointment under paragraph (3), the appointments panel and the Commissioners shall act in accordance with any guidance issued by the Secretary of State from time to time with respect to the appointment of Commissioners.
- (7) In this article and in article 5 “the effective date” means the last Friday of the month next following the month current at the commencement of the Yarmouth (Isle of Wight) Harbour Revision Order [2008].

4A Appointments panel

- 4A—(1) The Commissioners shall appoint three persons to act as the appointments panel whenever any appointment is to be made under article 4 of this Order.
- (2) The persons appointed under paragraph (1) above shall consist of two Commissioners and one person independent of the Commissioners.
- (3) The appointments panel shall having interviewed candidates give advice to the Commissioners as to the person or persons to be appointed.

Terms of office of Commissioners

5. Subject to articles 8 and 10 of, and paragraph 10 of Schedule 2 to this Order, an appointed Commissioner appointed after the effective date hold office for a term of office of three years unless the Commissioners decide having regard to the advice of the appointments panel at the time when any such appointment is made that a shorter term of office should apply to that appointment, in which case the relevant term of office shall be such as the Commissioners shall so decide.

REPEAL, REVOCATION AND SAVING PROVISIONS
PART I - Repeal

Chapter (1)	Short title (2)	Extent of repeal (3)
1931 Ch.lxxxix	Pier and Harbour Orders (Cowes and Yarmouth (Isle of Wight)) Confirmation Act 1931	Section 14

PART II – Revocations

Chapter (1)	Short title (2)	Extent of repeal (3)
S.I. 1981/318	Yarmouth (Isle of Wight) Harbour Revision Order 1980	Whole order
S.I. 1996/2480	Yarmouth (Isle of Wight) Harbour Revision Order 1996	Whole order
S.I. 2001/2185	Yarmouth (Isle of Wight) Harbour Revision (Constitution) Order 2001	Article 6

PART III – Savings

1. The repeal of the Act and Orders mentioned in Parts I and II of this Schedule (“the former legislation”) shall have effect subject to the following provisions of this Part of this Schedule.
2. In so far as anything done under any provision of the former legislation could have been done under any provision of this Order it shall not be invalidated by the repeal or revocation but shall have effect as if done under that last-mentioned provision.
3. 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.
4. 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.
5. References in this Order to things done, left undone, suffered, or occurring in the past shall, for the continuity of operation between the former legislation and any provision of this Order relating to the same matter, be construed as including reference to things done, left undone, suffered or occurring before the date of the coming into force of this Order.
6. 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.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on the Yarmouth (Isle of Wight) Harbour Commissioners for the management and regulation of Yarmouth (Isle of Wight) Harbour, and makes other provisions.

The Order repeals and in certain cases amends various existing enactments relating to Yarmouth (Isle of Wight) Harbour.

STATUTORY INSTRUMENTS

200X No.

HARBOURS, DOCKS, PIERS AND FERRIES

The Yarmouth (Isle of Wight) Harbour Revision Order 200X

WINCKWORTH SHERWOOD
35 Great Peter Street
Westminster
London
SW1P 3LR
Solicitors and Parliamentary Agents

28.2.08