STATUTORY INSTRUMENTS

2016 No. 151

HARBOURS, DOCKS, PIERS AND FERRIES

The Newhaven Harbour Revision Order 2016

Made - - - -	*5th February 2016*
Laid before Parliament	*12th February 2016*
Coming into force - -	*7th March 2016*

Newhaven Port and Properties Ltd has applied in accordance with section 14(2)(a) of the Harbours Act 1964(**1**) ("the Act") for a harbour revision order under section 14.

The Secretary of State, as the appropriate Minister for the purposes of that section, has by an Order(**2**) under section 42A of the Act(**3**) delegated the functions of the appropriate Minister under section 14(**4**) to the Marine Management Organisation(**5**).

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

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Newhaven Harbour Revision Order 2016 and shall come into force on 7th March 2016.

(2) The Act of 1863, the Act of 1878, the 1991 HRO and this Order may be cited together as the Newhaven Harbour Acts and Orders 1863 to 2016.

(**1**) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part 1), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I.2009/1941, article 2 and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(**2**) See S.I.2010/674.

(**3**) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

(**4**) For the definition of "the Minister" (mentioned in section 14(7)), see section 57(1).

(**5**) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

Interpretation

2. In this Order —

"the Act of 1847" means the Harbours, Docks, and Piers Clauses Act 1847(**6**);

"the Act of 1863" means the Newhaven Harbour and Ouse Lower Navigation Improvement Act 1863(**7**);

"the Act of 1878" means the Newhaven Harbour Improvement Act 1878 (as amended by the Newhaven Harbour Improvement Act 1882)(**8**);

"the Company" means Newhaven Port and Properties Limited;

"general direction" means a direction given or proposed to be given under article 4;

"the harbour" means Newhaven Harbour as comprised within the harbour limits, including the harbour premises;

"the harbour limits" means the limits of the harbour specified in article 3;

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

"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 Company as part of their harbour undertaking;

"the harbour undertaking" means the undertaking of the Company authorised by the Newhaven Harbour Acts and Orders 1863 to 2016;

"the 1991 HRO" means the Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991(**9**);

"jet bike" means any personal watercraft propelled by a water-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 in (a) and (b);

"special direction" means a direction given or proposed to be given under article 7;

"vessel" means a ship, boat, raft, pontoon or water craft of any description and includes non-displacement craft, jet bike, seaplane 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, which in all cases is used or is capable of being used as a means of transportation, storage or access on or under the water; and

"works" means the carrying out of an activity involving construction or the alteration, renewal, extension, breaking up or demolition of a structure or vessel or an engineering, mining or other operation.

The harbour limits

3.—(1) The limits of the harbour within which the Company exercises jurisdiction as a harbour authority and the powers of the harbour master may be exercised are –

(**6**) 1847 c,27.
(**7**) 1863 c.184..
(**8**) 1878 c.71. amended by 1882 c.78.
(**9**) S.I.1991/1257.

(a) all tidal reaches of the Ouse river and estuary that are covered at the level of high water south of the parallel of latitude 50 degrees 48.20N (approximately 85m north of the Energy Recovery Facility) and extending out to sea bounded within the co-ordinates set out in sub-paragraph (b);

(b) from approximately the position of the southern extremity of Mill Drove at 50 degrees 46.95'N, 0 degrees 04.10'E; thence following an imaginary straight line in a southerly direction to a location at 50 degrees 45.00'N, 0 degrees 04.10'E thence following an imaginary straight line in a west north westerly direction to a location at 50 degrees 45.55'N, 0 degrees 00.75'E; thence following an imaginary straight line in a north easterly direction to a location at 50 degrees 46.50'N, 0 degrees 03.20'E; thence following an imaginary straight line in a north north westerly direction to a position at approximately the position of Burrow Head/Castle Hill Cliffs at 50 degrees 46.88'N, 0 degrees 00 03.00'E. (all coordinates in degrees, minutes and decimals of minutes and based on WGS 84 datum); and

(c) the harbour premises, whether or not within the areas described in sub-paragraphs (a) and (b).

(2) The limits within which the Company exercises jurisdiction as a harbour authority and the powers of the harbour master are exercisable are described in paragraph (1) and shown edged in red on the harbour map.

(3) In the event of any discrepancy between the description of the limits of the harbour in paragraph (1) and the limits shown on the harbour map the description of the limits in that paragraph shall prevail over the harbour map.

(4) In this article-

"the harbour map" means the map prepared in triplicate, signed by the Chief Executive Officer of the Marine Management Organisation and marked "Newhaven Harbour Revision Order 2016", of which two copies have been deposited at the offices of the Marine Management Organisation and one copy has been deposited at the office of the Company";

"the level of high water" means the level of mean high water spring tides; and

"WGS84" means the World Geodetic System, revised in 1984 and further revised in 2004.

PART 2

HARBOUR REGULATION

General and special directions

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

4.—(1) The Company may, in accordance with the requirements of article 5, give directions for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons, the protection of property, and the prevention or amelioration of environmental harm in the harbour.

(2) A direction under this article may apply—

(a) to all vessels or to a class or type of vessel; or

(b) to persons designated in the direction; or

(c) to the whole of the harbour or to a part; or

(d) at all times or at certain states of the tide;

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), (c) and (d).

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

(4) For the purposes of this article, "environmental harm" means significant harm to the health of living organisms or other interference with the ecological systems of which they form part.

Procedure for giving, amending or revoking general directions

5.—(1) Subject to paragraph (7), if the Company proposes to give, amend or revoke a direction under article 4 it must-

(a) give notice in writing of the proposal to the Chamber of Shipping and the Royal Yachting Association and to such other persons or organisations as it considers appropriate for the purposes of the application of this provision ("the designated consultees");

(b) consult with the designated consultees upon the proposal, including allowing a period of not less than 6 weeks from the date notice has been given by it to those consultees in accordance with sub-paragraph (a), for each of them to make written representations to the Company on the proposal;

(c) have regard to any representations made by the designated consultees during that consultation;

(d) give notice in writing to the designated consultees, following the consultation, as to whether the Company proposes to proceed with the proposal and, if so, specifying whether it is making any modifications to the proposal and its reasons for so doing; and

(e) if the Company proposes to proceed with the proposal and any of the designated consultees has made representations against the proposal, invite each designated consultee who has made such representations, within 28 days from the date of the notice given to him under sub-paragraph (d) or such longer period as may be specified in that notice, to confirm in writing if they maintain an objection to the proposal.

(2) Where the Company has complied with the requirements of paragraph (1) in relation to a proposal to give, amend or revoke a direction, they may proceed to give, amend or revoke the direction if-

(a) none of the designated consultees has made representations against the proposal;

(b) none of the designated consultees, having made representations against the proposal, gives notice to the Company under paragraph (1)(e) maintaining an objection to the proposal; or

(c) an objection to the proposal has been maintained but the requirements specified in paragraph (3) have been complied with.

(3) Where a designated consultee has given notice to the Company under paragraph (1)(e) that they maintain an objection to the proposal, the following procedure applies-

(a) the issue must be referred to an independent person ("the adjudicator") to be agreed between the Company and each of the designated consultees maintaining an objection to the proposal ("the parties") or, failing agreement, appointed on the application of any such party by the President of the London Maritime Arbitrators Association;

(b) the adjudicator must, so far as is reasonably practicable within three months of the referral, first provide a reasonable opportunity for each of the parties to make representations to or be heard by the adjudicator and then make a report in writing to the Company with findings and reasoned recommendations on the issue, a copy of which must also be provided by the adjudicator to the each of the other parties;

(c) the Company must decide whether to proceed with the proposal having regard to the report and recommendations contained in the report of the adjudicator (but shall not be bound to

give effect to the recommendations) and, once they have so decided, it must give notice in writing to the designated consultees of its decision and of the reasons for that decision.

(4) If the Company wishes to proceed with the proposal in a form materially different from both the form notified to the designated consultees under paragraph (1)(d) and that recommended by the adjudicator under paragraph (3)(b), it must proceed, unless the designated consultees otherwise agree in writing, as if the proposal were a new proposal to which paragraph (1) applies.

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

(6) The costs incurred by the adjudicator and by each of the parties on any referral under paragraph (3) are to be paid by such one or more of the parties to the referral as the adjudicator may direct.

(7) Subject to paragraph (8) paragraphs (1) to (6) do not apply where the Company proposes in the interests of navigational safety to give, amend or revoke a general direction applying to vessels or persons-

(a) in an emergency; or

(b) for the purpose of making temporary provision for an intended activity or operation in the harbour which is expected to commence less than 4 months after the Company is notified of or otherwise becomes aware of it and to last not more than 28 days and which the Company considers it appropriate to make, after taking into account other activities and operations in the harbour which may be affected by it.

(8) Where pursuant to paragraph (7) the Company proceeds to give, amend or revoke a general direction without complying with paragraphs (1) to (6), it must-

(a) give notice of the direction, amendment or revocation as soon as is practicable to those persons who would otherwise have been designated consultees had paragraph (1)(a) applied; and

(b) if the direction, or amendment is to continue in force for a period of more than 3 months from the date of that notice or the revoked direction is not intended to be restored within that period, apply the procedures specified in paragraphs (1) (b) to (e) and (2) to (6) to the question of the retention of the direction or amendment or revocation of the direction with the following modifications-

(i) a reference in those paragraphs to the 'proposal' is to be read as a reference to the direction, amendment or revocation;

(ii) in paragraph (1)(b), for "sub-paragraph (a)" substitute "paragraph (8)(a)"; and

(iii) a reference in those paragraphs to the Company proceeding with a proposal is to be read as a reference to the Company determining that the direction or amendment should remain in force or the revoked direction should not be restored.

Publication of general directions

6.—(1) Notice of the giving of a general direction and of any amendment or revocation of a general direction shall, except in an emergency, be published by the Company as soon as practicable once in a newspaper circulating in the locality of the harbour and shall state a place at which copies of the general direction, as to be given, amended or revoked, may be inspected.

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Company to be appropriate.