STATUTORY INSTRUMENTS

2021 No. 129

HARBOURS, DOCKS, PIERS AND FERRIES

The Dart Harbour and Navigation Harbour Revision Order 2021

Made - - - -	*9th February 2021*
Laid before Parliament	*16th February 2021*
Coming into force - -	*12th March 2021*

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Dart Harbour and Navigation Authority has applied for a harbour revision order in accordance with section 14 of the Harbours Act 1964(**a**) ("the Act").

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an Order(**b**) under section 42A of the Act(**c**) delegated the functions of the appropriate Minister under section 14(**d**) to the Marine Management Organisation(**e**).

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), of the Act makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Dart Harbour and Navigation Harbour Revision Order 2021 and shall come into force on 12th March 2021.

(2) The Dart Harbour and Navigation Authority Act 1975, the Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002 and this Order may be cited together as the Dart Harbour and Navigation Act and Orders 1975 to 2021.

Interpretation

2.—(1) In this Order—

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

"the Act of 1975" means the Dart Harbour and Navigation Authority Act 1975(**g**);

"the Order of 2002" means the Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002(**h**);

"ashore" means all those parts of the harbour which are not constituted of land covered by water at the level of low water;

"the Authority" means the Dart Harbour and Navigation Authority;

"Dart Harbour User Group" means the consultative body or bodies established by the Authority in accordance with the requirements of article 14 of the Order of 2002;

"general direction" means a direction given under article 3 of this Order;

"harbour" means the harbour as defined in section 2(1) (interpretation) of the Act of 1975 the limits of which are described in section 38 (limits of jurisdiction) of the Act of 1975;

(**a**) 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 I), 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).

(**b**) S.I. 2010/674.

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

(**d**) For the definition of "the Minister", see section 57(1) of the Harbours Act 1964 (c. 40).

(**e**) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23). The head office address of the Marine Management Organisation is located at Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.

(**f**) 1847 c. 27.

(**g**) 1975 c. xxii.

(**h**) S.I. 2002/2730.

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

"harbour operations" includes—

(a) the marking, lighting or dredging of the harbour or any part thereof;

(b) the berthing, mooring, dry docking or storage of a vessel;

(c) the laying and maintenance of moorings or other similar apparatus in the harbour;

(d) the warehousing, sorting, weighing or handling of goods;

(e) the movement of goods and vehicles (including parking, designated and prohibited areas, speed limits, removal from the harbour);

(f) the towing, or moving of a vessel;

(g) the loading or unloading of goods, or embarking or disembarking of passengers;

(h) energy generation;

(i) the control of use of the harbour by members of the public and other third parties (including movement, conduct, authorised activities, designated and prohibited areas) but not so as to cause an interference with any public right of way;

"harbour premises" means the harbour premises as defined in section 2(1) (interpretation) of the Act of 1975;

"harbour undertaking" means the undertaking for the time being of the Authority as set out in the Dart Harbour and Navigation Act and Orders 1975 to 2021;

"hovercraft" means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

"jet bike" 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 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);

(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) above;

"land" includes land covered by water except where expressly stated otherwise;

"the level of low water" means the level of mean low-water springs;

"master", in relation to a vessel, means any person having or taking command, charge, management or conduct of the vessel for the time being;

"special direction" means a direction given under article 6 of this Order;

"Trinity House" means the Corporation of Trinity House of Deptford Strond(**a**);

"vehicle" includes any vehicle propelled on rails, any machinery on wheels or caterpillar tracks, trailers, caravans, bicycles, and mobile homes and includes a hovercraft or any other amphibious vehicle;

"vessel" includes a ship, boat, houseboat, raft or water craft of any description, however propelled or moved, and includes non-displacement craft, a jet bike, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted or floating on or being submersed in water (whether permanently or temporarily);

(2) All situations, points, directions, distances, lengths, dimensions, areas and other measurements stated in this Order shall be construed as if the words "or thereabouts" were

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(**a**) The Corporation of Trinity House, Tower Hill, London, EC3N 4DH.

inserted after each such situation, point, direction, distance, length, dimension, area or other measurement.

PART 2

GENERAL DIRECTIONS AND SPECIAL DIRECTIONS

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

3.—(1) The Authority may, in accordance with the requirements of article 4, 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 Authority may amend or revoke a direction given under paragraph (1).

(4) The Authority must keep and make available for inspection at its main office and on its website(**a**) a public register of all in force general directions.

Procedure for giving, amending or revoking general directions

4.—(1) Subject to paragraph (7), if the Authority proposes to give, amend or revoke a general direction, it 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) Chamber of Shipping;

(ii) the Royal Yachting Association;

(iii) the Dart Harbour User Group; and

(iv) such other persons or organisations as it considers appropriate for the purposes of the application of this provision;

(b) place a notice of the proposal on the Authority's website and in prominent locations at the Authority's 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 Authority regarding the proposal;

(**a**) Dart Harbour and Navigation Authority, 6 Oxford Street, Dartmouth TQ6 9AL, www.dartharbour.org.

(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 Authority 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

(f) if the Authority proposes 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 Authority may specify.

(2) Where the Authority has complied with paragraph (1), it 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 Authority 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 Authority 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 Authority must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator's report (but it is not bound to give effect to any recommendations) and, once it has decided, must give notice in writing to the designated consultees and to any other person that provided a consultation response of its 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 Authority wishes 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), it 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 Authority 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 Authority having been notified or otherwise becoming aware of the intended activity or operation,

(ii) is to last less than 28 days, and

(iii) the Authority considers 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 Authority proceeds to give or amend a general direction in accordance with paragraph (7), it 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-paragraph (a) and (b)" substitute "paragraph (8)(a)"; and

(iii) a reference to the Authority 'proceeding' with a proposal is to be read as a reference to the Authority determining that the direction or amendment should remain in force.

Publication of general directions

5.—(1) Subject to paragraph (4), the Authority 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 Authority's 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 Authority must display notices of general directions that apply to harbour premises at prominent locations within the harbour.

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

Special directions

6.—(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

7.—(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

8.—(1) Without prejudice to any other remedy available to the Authority, 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 Authority in the exercise of the powers conferred by paragraph (1) shall be recoverable by the Authority as if it were a charge of the Authority in respect of the vessel.

Master's responsibility in relation to directions

9. 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.

10. Any harbour direction, special direction, byelaw, regulation, licence, lease, consent or other agreement made, issued, entered into or granted by the Authority 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 set out in article 14 of this Order, continue to have effect.

PART 3

MISCELLANEOUS

Saving for Trinity House

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

Crown Rights

12.—(1) Nothing in this Order shall—

(a) prejudicially affect any estate right, power, privilege, authority or exemption of the Crown, or

(b) authorise the Authority or any licensee to take, use, enter upon or in any manner interfere with any land or interests in land or any rights of whatsoever description (including any part of the shore or bed of the sea or of any river, channel, creek, bay or estuary) belonging to—

(i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the prior consent in writing of those Commissioners, or

(ii) 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)(b) may be given unconditionally or subject to such conditions and upon such terms as may be considered necessary or appropriate.

Notices

13.—(1) Except where this Order expressly provides otherwise a notice or other document required or authorised to be given for the purposes of this Order, or any direction given under this Order, must be in writing and must be sent by first class post.

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

(3) Where a person on whom a notice or other document is to be given has agreed in writing that notices may be given by email, or other electronic means, the Authority may provide notices by that means until such time as the person informs it in writing that they are 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 a person in relation to the giving of a notice or document under paragraph (1) is, if they have 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, their 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 given 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 a person as having an interest in or as the occupier of, any land, it may be given by—

(i) addressing it to them by name or by the description of "owner", or as the case may be "occupier", of the land (describing it), and

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(**a**) 1978 c.30.

(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 given by exhibiting it in a conspicuous position on or near the vessel (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) or by handing it to a member of the crew; and

(c) in the case of any other notice or document or a notice or document that is not capable of being given pursuant to sub-paragraph (b) it may be given by displaying it at the office of the harbour master for the period of its duration.

Amendments to the Act of 1975

14. The Act of 1975 is amended as follows—

(a) in section 2(1) in an appropriate place insert;

"the Order of 2021 means the Dart Harbour and Navigation Harbour Revision Order 2021 (**a**)"

(b) in section 2(1) for the definition of "vessel" substitute the definition of "vessel" contained in article 2(1) of this Order;

(c) in section 3(1)(ii) omit "in section 2 (interpretation) of this Act" and substitute "in article 2(1) of the Order of 2021"; and

(d) in section 48 for "£50" substitute "level 3 on the standard scale".

Signed by authority of the Marine Management Organisation

Tom McCormack
Chief Executive Officer
An authorised employee of the Marine Management Organisation

9th February 2021

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers on the Dart Harbour and Navigation Authority ("the Authority") as harbour authority for Dart Harbour and the harbour master (defined in article 2) powers of general and special direction for the regulation and management of the harbour (articles 3 to 9). The powers of general direction are extended to include the regulation of vehicles in the harbour and provision is made for a register of all in force general directions. This may be inspected during working hours at the main office of the Authority at 6 Oxford Street, Dartmouth TQ6 9AL and online at www.dartharbour.org (article 3).

The Order creates an offence of failing to comply with special or general directions, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 7).

A defence of due diligence is available to a person charged under article 7 (article 7(2)).

The Order also amends section 48 (obstruction of harbour master and others) of the Dart Harbour and Navigation Authority 1975 ("the Act of 1975") (article 14).

(**a**) S.I. 2021/129.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or the public sector is foreseen.

An Explanatory Memorandum is available alongside the instrument on the UK legislation website at www.legislation.gov.uk

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