

20[] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The North Sunderland Harbour Revision Order 20[]

<i>Made</i>	[20[]]
<i>Laid Before Parliament</i>	[20[]]
<i>Coming into force -</i>	[20[]]

CONTENTS

PART 1

PRELIMINARY

1. Title and commencement
2. Interpretation
3. Incorporation of enactments

PART 2

CONSTITUTION OF THE COMMISSIONERS

4. The Commissioners
5. Appointment and terms of office of Commissioners
6. Casual vacancies
7. Declaration to be made by Commissioners
8. Additional Commissioners
9. Disqualification of Commissioners
10. Indemnity insurance for Commissioners
11. Provisions applying to Commissioners

PART 3

MANAGEMENT AND REGULATION OF HARBOUR

12. Harbour limits
13. General powers
14. Power to dredge

15. Power to provide boating facilities
16. Moorings
17. Obstruction of moorings
18. Removal of obstructions other than vessels and vehicles
19. Power to remove goods
20. Power to give directions as to loading or unloading of certain goods
21. Power to appropriate parts of harbour
22. Life-saving craft and appliances
23. Power to give general directions as to use of the harbour, etc.
24. Procedure for giving, amending or revoking general directions
25. Publication of general directions
26. Special directions as to use of the harbour, etc.
27. Master's responsibility to be unaffected
28. Failure to comply with directions
29. Enforcement of directions
30. Byelaws as to harbour
31. Confirmation of byelaws
32. Revocation of byelaws
33. General rules for navigation
34. Vessels adrift
35. Power to deal with abandoned vessels
36. Power to licence tugs
37. Boarding of vessels
38. Obstruction of officers
39. Notice before entry of dangerous goods
40. Removal of vehicles
41. Immobilisation of vehicles illegally parked
42. Parking places

PART 4

CHARGES

43. Charges other than ship, passenger and goods dues and for services or facilities
44. Payment of charges
45. Recovery of charges
46. Compounding arrangements and rebates
47. Deposit for charges
48. Liens for charges
49. Information for the purpose of landing charges
50. Harbour master may prevent sailing of vessels
51. Exemptions from dues

PART 5

CONTROL OF WORKS AND DREDGING

52. Restriction of works and dredging
53. Control of certain operations and works of statutory undertakers
54. Licensing of works
55. Licence to dredge
56. Appeals in respect of works or dredging licences
57. Tidal works not to be executed without approval of the Secretary of State

58. Lights on tidal works during construction
59. Provision against danger to navigation
60. Abatement of works abandoned or decayed
61. Survey of tidal works
62. Permanent lights on tidal works

PART 6

MISCELLANEOUS

63. Power to grant tenancies and to dispose of land
64. Commercial activities and development, etc. of land
65. Borrowing powers
66. Defence of due diligence
67. Crown Rights
68. Saving for Trinity House
69. Notices
70. Amendment and repeal

SCHEDULES

- | | | |
|------------|---|--------------------------------------|
| Schedule 1 | — | Form of Declaration by Commissioners |
| Schedule 2 | — | Provisions Applying to Commissioners |
| Schedule 3 | — | Repeals |

The North Sunderland Harbour Commissioners have applied in accordance with section 14(2)(a) of the Harbours Act 1964(a) (the “1964 Act”) for a harbour revision order to be made under section 14 of the 1964 Act.

The Secretary of State, as the appropriate Minister for the purposes of that section 14, has by an Order(b) under section 42A of the 1964 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) of the 1964 Act and in exercise of the powers conferred by section 14(1) and (3) of the 1964 Act, makes the following Order.

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- (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 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 Schedule 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 the Marine and Coastal Access Act 2009 (c. 23), section 315 and Schedule 21, paragraphs 1 and 3(1).
 - (d) For the definition of “the Minister” (mentioned in section 14(7)), see section 57(1).
 - (e) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c. 23), section 1.

PART 1
PRELIMINARY

Title and commencement

1.—(1) This Order may be cited as the North Sunderland Harbour Revision Order 20[] and comes into force on [20[]].

(2) The 1931 Order, the 1993 Order and this Order may be cited together as the North Sunderland Harbour Orders 1931 to 20[].

Interpretation

2.—(1) In this Order unless the context otherwise requires—

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

“1931 Order” means the North Sunderland Harbour Order 1931(b);

“1964 Act” means the Harbours Act 1964(c);

“1993 Order” means the Harbour Authorities (Variation of Constitution) Order 1993(d)

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

“Commissioners” means the North Sunderland Harbour Commissioners;

“general direction” means a direction given under article [23];

“harbour” means the harbour of North Sunderland, Seahouses, as comprised within the harbour limits and the harbour premises, or any part of it or them;

“harbour limits” means the limits of the harbour as defined by article [12];

“harbour map” means the map referred to in article 23 of the 1931 Order;

“harbour master” means a person appointed as such by the Commissioners and includes the harbour master’s authorised 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 harbour master;

“harbour premises” means land adjacent to (but not necessarily adjoining) the delineated limits described in article 12(1)(a) for the time being vested in, leased to or occupied or administered by the Commissioners as part of the harbour undertaking and occupied wholly or mainly for the purposes of activities there carried on, which may include docks, quays, piers, wharves, berths, locks, breakwaters, jetties, slipways, landing places, harbour walls, wave walls, rock revetments, yards, roads, sheds other buildings and all other works and conveniences, land and premises;

“harbour undertaking” means the undertaking of the Commissioners authorised by the North Sunderland Harbour Orders 1931 to 20[];

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

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and “maintenance” is to be construed accordingly;

(a) 1847 c. 27 (10 and 11 Vict)

(b) S.R. & O. 1931/928, made under the Fishery Harbours Act 1915 (ch. 48 (5 and 6 Geo 5))

(c) 1964 c. 40

(d) S.I. 1993/1451

(e) 1995 c. 21

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

“moorings” includes floating jetties, pontoons, buoys and like apparatus or facilities;

“new constitution date” means [] 202[];

“owner” in relation to any vessel, includes any part-owner, any charterer (including but not limited to a charterer by demise) or any mortgagee in possession of the vessel;

“personal watercraft” means any watercraft propelled by a water-jet engine or other mechanical means of propulsion and steered by—

- (a) means of a handlebar-operated linkage system (with or without a rudder at the stern);
- (b) the person or persons riding the craft using their body weight for the purpose; or
- (c) a combination of the methods referred to in (a) and (b);

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre on the water;

“special direction” means a direction given under article [26];

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for any of the purposes of the Town and Country Planning Act 1990(a);
- (b) any other person who exercises functions under the Land Drainage Act 1991(b);
- (c) a coast protection authority within the meaning of section 1 of the Coast Protection Act 1949(c);

“tidal work” means so much of any work as is on, under or over tidal waters or land below the level of high water;

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

“vessel” means a ship, boat, raft or water craft of any description and includes a non-displacement craft, personal watercraft, seaplane and any other thing constructed or adapted for floating on or being submerged 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) All situations, distances, points, coordinates, directions, areas, lengths, dimensions or other measurements stated in this Order are to be construed as if the words “or thereabouts” were inserted after each such situation, distance, point, coordinate, direction, area, length, dimension or other measurement and distances between points on a work are to be taken to be measured along that work.

(3) Coordinates specified in this Order are in degrees, minutes and decimals of minutes and are to be construed as references to WGS84 coordinates.

(4) In paragraph (3) “WGS84” means the World Geodetic System, revised in 1984 and further revised in 2004.

Incorporation of enactments

3.—(1) The enactments referred to in paragraph (2) are, so far as applicable and not inconsistent with this Order, incorporated with this Order.

(a) 1990 c. 8
(b) 1991 c. 59
(c) 1949 c. 74 (12, 13 and 14 Geo 6)

(2) The enactments are—

- (a) sections 2 to 4, 60, 62 to 65 and 75 to 83] of the Commissioners Clauses Act 1847(a); and
- (b) sections 2, 3, 4, 23, 27, 29, 31 to 46, 51 to 59, 61 to 66, 69 to 78 and 83 to 85 of the 1847 Act.

(3) The enactments referred to in paragraph (2) have effect as follows—

- (a) the expression “the harbour, dock or pier” means the harbour;
- (b) the expression “limits” and “the prescribed limits” mean the harbour limits;
- (c) the expression “the special Act” means the North Sunderland Harbour Orders 1931 to 20[];
- (d) the expressions “the Promoters of the undertaking” and “the undertakers” means the Commissioners;
- (e) for the definition of the word “vessel” in section 3 of the 1847 Act substitute the definition of that word in article [2](1) of this Order;
- (f) in section 23 of the 1847 Act, the words “provided that no such lease be granted for a longer term than three years” are omitted;
- (g) nothing in section 53 of the 1847 Act requires the harbour master to serve on the master of a vessel notice in writing of a direction but such directions may be given orally, or in any other reasonable manner;
- (h) section 63 of the 1847 Act has effect as if for the words from “liable to” to the end of the section there were substituted the words “be guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale”;
- (i) section 69 of the 1847 Act has effect as if for the words from “shall forfeit” to the end of the section there were substituted the words “is liable on summary conviction to a fine not exceeding level 4 on the standard scale”;
- (j) in section 83 of the 1847 Act, the proviso that follows the words “the special Act” is omitted;
- (k) section 85 of the 1847 Act has effect as if for the words from “in the prescribed manner” to the end of the section there were substituted the words “by the Secretary of State”; and
- (l) the maximum penalty for any summary offence under any of the sections referred to in paragraph (2) is level 4 on the standard scale.

PART 2

CONSTITUTION OF THE COMMISSIONERS

The Commissioners

4.—(1) Subject to articles [5, 6, 8 and 9], on and after the new constitution date the Commissioners will continue to be a body corporate with perpetual succession and a common seal and will consist of no more than nine persons of whom—

- (a) eight are to be appointed by the Commissioners; and
- (b) one is to be the harbour master,

but the Commissioners will be properly constituted at any time if there are no fewer than five Commissioners (in office under this paragraph or articles [6] or [8]).

(a) 1847 c. 16 (10 and 11 Vict)

(2) Each Commissioner appointed under paragraph (1)(a) and articles [6] or [8] must be a person who appears to the appointing body in question to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge by the Commissioners of their functions.

(3) Without prejudice to the generality of paragraph (2), a person must not be appointed under paragraph (1)(a) or articles [6] or [8] unless that person has special knowledge, experience or ability in one or more of the following matters—

- (a) commercial licensed fishing boat ownership and operation;
- (b) commercial licensed passenger vessel ownership and operation;
- (c) management of harbours;
- (d) commercial or financial matters;
- (e) water related leisure activities;
- (f) the local community and the wider community or the economic and social context within which the Commissioners operate;
- (g) administration;
- (h) local government;
- (i) tourism;
- (j) environmental matters; and
- (k) any other skills and abilities considered from time to time by the Commissioners to be relevant to the discharge by them of their functions.

(4) In making an appointment under paragraph (1)(a) or articles [6] or [8] the Commissioners must have regard to any guidance issued by the Secretary of State from time to time with respect to the exercise of such functions.

(5) An existing Commissioner will be eligible for appointment or co-option to act as a Commissioner on and after the new constitution date.

Appointment and terms of office of Commissioners

5.—(1) The first appointments under article 4(1)(a) must be made as soon as reasonably practicable after this Order comes into force and, in any event, before the new constitution date.

(2) Of the Commissioners so appointed—

- (a) not less than one nor more than two are to hold office for a period of one year commencing on the new constitution date;
- (b) not less than two nor more than three are to hold office for a period of two years commencing on the new constitution date; and;
- (c) not less than two nor more than three, one of whom must be appointed to chair the Commissioners, are to hold office for a period of three years commencing on the new constitution date,

as the Commissioners must specify when they make each of those appointments.

(3) Subsequent appointments made in any year under article 4(1)(a) are to be for a term of three years starting on the anniversary of the new constitution date following the expiry of a previous term of office, and must be made so that the persons appointed are able to act as Commissioners on and after that date.

(4) Paragraph (3) does not apply to Commissioners appointed under articles [6] or [8] and is subject to articles [7] and [9] and paragraph 3 of Schedule 2.

Casual vacancies

6.—(1) A casual vacancy arising in the office of a Commissioner appointed under article 4(1)(a) must, unless it is not reasonably practical to do so, be filled by the appointment of a Commissioner in accordance with the requirements of article 4(2) to (6) as if the appointment were made under article 4.

(2) A Commissioner appointed to fill a casual vacancy under this article is, subject to articles [7] and [9] and paragraph 3 of Schedule 2, to hold office during the remainder of the term for which the Commissioner who is replaced was appointed.

Declaration to be made by Commissioners

7. No person may act as a Commissioner until that person has made the declaration set out in Schedule 1 (or a declaration to that effect), and a person who fails to make that declaration within three months of being appointed will cease to be a Commissioner.

Additional Commissioners

8. The Commissioners, if they see fit, may at any time appoint up to two additional Commissioners for a fixed term of up to twelve months.

Disqualification of Commissioners

9.—(1) If the Commissioners are satisfied that a Commissioner (other than the harbour master)—

- (a) has been absent from meetings of the Commissioners for a period of six consecutive months without the permission of the Commissioners;
- (b) has become bankrupt or has made an arrangement with their creditors; or
- (c) is incapacitated by physical or mental illness from discharging the functions of a Commissioner,

the Commissioners may by resolution declare the office of that Commissioner to be vacant and on such a resolution coming into effect that office is to become vacant.

(2) If the Commissioners are satisfied that a Commissioner—

- (a) has acted in a manner which has seriously impeded or prejudiced the Commissioners in the performance of their functions;
- (b) has failed to comply with the standards required for the governance of the harbour by the Commissioners;
- (c) has acted in a manner which may bring the Commissioners into disrepute or which is otherwise inappropriate having regard to the functions of the Commissioners; or
- (d) is otherwise unable, unwilling or unfit to discharge adequately the functions of a Commissioner,

the Commissioners may request in writing the resignation of that Commissioner or, by resolution, declare the office of that Commissioner to be vacant and on receipt of the resignation or on such a resolution coming into effect, as the case may be, that office is to become vacant.

Indemnity insurance for Commissioners

10. The Commissioners may enter into, and pay premiums for, a contract of insurance to indemnify the Commissioners jointly or severally against personal liability arising from any act or omission of the Commissioners or of any of them; not being an act or omission by any Commissioner which that

Commissioner knew to be a breach of duty or concerning which that Commissioner was reckless as to whether it was such a breach.

Provisions applying to Commissioners

11. On and after the new constitution date, Schedule 2 is to have effect with respect to the Commissioners.

PART 3

MANAGEMENT AND REGULATION OF HARBOUR

Harbour limits

12.—(1) The limits of the harbour within which the Commissioners have and may exercise the functions conferred on them by this Order and jurisdiction as a harbour authority (within the meaning of section 57 (interpretation) of the 1964 Act) and within which the powers of the harbour master are exercisable are—

- (a) the area below the level of high water lying within the following imaginary lines, that is to say an imaginary line commencing at a point at the level of high water on the seashore at position 55°35'00"N, 001°39'19"W (1), from there on a bearing of 360° to a position at 55°35'07"N, 001°39'19"W (2), from there on a bearing of 090° to a position at 55°35'07"N, 001°38'39"W (3), from there on a bearing of 180° to a point at the level of high water on the seashore at position 55°34'47"N, 001°38'39"W (4) and from there following the level of high water to position 55°35'00"N, 001°39'19"W (1); and
- (b) so much of the harbour premises as is not situated within the area described in sub-paragraph (a).

(2) In the event of any discrepancy between the descriptions of the limits of the harbour referred to in paragraph (1) and the boundaries shown on the harbour map, the description of the limits is to prevail over the harbour map.

(3) The Commissioners must keep, and make available for inspection at their main office^(a) and on their website^(b) from the day on which this Order comes into force, a plan showing for illustrative purposes only the harbour limits and the harbour premises as described in article 12 of this Order (the “illustrative plan”).

(4) The Commissioners must update the illustrative plan to reflect any alterations to the extent of the harbour premises within the period of 30 days beginning on the day on which the alterations are made.

General powers

13.—(1) Subject to the other provisions of this Order, the Commissioners may take such steps from time to time as they consider necessary or desirable for the maintenance, operation, management and improvement of the harbour and the accommodation and facilities (including navigation facilities) afforded to it or available in or in connection with the harbour.

- (2) In particular, and without prejudice to the generality of paragraph (1), the Commissioners may—
 - (a) improve, manage, regulate, mark and light the harbour and any works in it;
 - (b) improve, renew, alter, extend, demolish, reconstruct and maintain any structures, works and equipment in the harbour, including but not limited to any bunds, embankments, walls, roads (except public highways), footways, approaches, steps, landing places, piers, quays, jetties,

(a) 1 Harbour Road, Seahouses, NE68 7RN
(b) www.nsh.org.uk

slips, wharves, groynes, sea defences, berthing heads, mooring posts, mooring buoys, moorings, stagings, piles, booms, dolphins, bollards, mooring rings, fenders, walkways, buoys, navigation marks, cranes, lights, beacons, sewers, drains, watercourses, gas and water pipes, apparatus for electric light and power and for telecommunications, warehouses, offices, sheds and other works, buildings and facilities which they consider necessary to secure the purposes of this Order, including the accommodation or convenience of vessel, vehicles or other traffic or for the protection of the harbour;

- (c) do any other thing (including the provision of facilities or services or the carrying on of any business) which, in their opinion, is in the interests of the proper carrying on, operation, management, improvement or development of the harbour or can advantageously be undertaken by the Commissioners by virtue of their activities in relation to the harbour;
- (d) make such other use as the Commissioners consider appropriate of any resources so far as they are not required for the purposes of the harbour undertaking; and
- (e) nourish, replenish and otherwise alter the levels of beaches or improve the foreshore.

(3) Subject to the provisions of this Order, the Commissioners may by agreement purchase and hold for the purposes of this Order any land in addition to that vested in the Commissioners under this Order.

(4) No other provision of the North Sunderland Harbour Orders 1931 to 20[] prejudices or derogates from the generality of this article.

Power to dredge

14.—(1) Subject to the provisions of this Order, the Commissioners may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed, shores, channels and foreshores of the harbour, and may blast any rock in that area.

(2) Subject to paragraph (3), any material (other than any wreck within the meaning of Part 9 of the 1995 Act) from time to time dredged up or removed is the property of the Commissioners who may use, appropriate, sell, deposit or otherwise dispose of it as they think fit.

(3) No dredged materials referred to in this article may be laid down or deposited in any place below the level of high water otherwise than in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Secretary of State.

Power to provide boating facilities

15. Subject to the provisions of Part 4 of the Marine and Coastal Access Act 2009^(a) and to the provisions of this Order, the Commissioners may construct, lay down, maintain and operate in the harbour such works for the provision of boating or marina facilities as they may consider appropriate.

Moorings

16.—(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 the Commissioners or in which they hold an appropriate interest; or
- (b) with the consent in writing of the owner or lessee, as appropriate, on any other land in the harbour,

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

(2) The Commissioners may issue permits on such conditions (including conditions as to payment) as they think fit authorising the holder of the permit to use or allow the use of any moorings provided by the Commissioners under this article.

(a) 2009 c. 23

(3) The Commissioners may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Commissioners may from time to time grant to a person with or without conditions a licence to place, lay down, maintain, renew, use and have moorings for vessels within the harbour.

(5) Nothing in any licence granted under paragraph (4) entitles a person to place, lay down, maintain, renew or use and have any moorings on land not owned or leased by that person or by the Commissioners or in which that person or the Commissioners has no appropriate interest.

(6) The Commissioners may charge for a licence granted under paragraph (4) such reasonable fee as the Commissioners may from time to time prescribe.

(7) Any licence granted under paragraph (4) is, unless otherwise stated in the licence in question, to be valid for a period of one year commencing with the date on which it takes effect.

- (8)(a) The Commissioners may give notice in writing to the person having the control of any vessel using any mooring in the harbour at the date this Order comes into force requiring that person within 28 days to remove the mooring so as to enable the Commissioners to provide moorings in accordance with paragraph (1).
- (b) The Commissioners must offer to make available to the person having the control of the vessel referred to in such notice a mooring provided by them under paragraph (1) as soon as such mooring has been laid down.
- (c) If any person fails to comply with a notice given by the Commissioners under this paragraph, the Commissioners may at any time after the expiration of 28 days from the date of the giving of the notice remove the mooring referred to in that notice.

Obstruction of moorings

17.—(1) 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 the whole or any part of any mooring from the harbour;
- (c) without reasonable excuse causes or permits a vessel to be moored in the harbour except at a mooring provided or licensed by the Commissioners under this Order or at a quay, jetty, slipway or other works or land owned or leased by the Commissioners; or
- (d) places, lays down, maintains, renews or has in the harbour any mooring not provided or licensed by the Commissioners under this Order,

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

(2) If any person commits an offence under paragraph (1)(c) above the Commissioners may at any time after the expiration of seven days from the date of the offence—

- (a) remove the vessel, including any tackle with the vessel;
- (b) dispose of it; and
- (c) recover out of the proceeds of sale—
- (i) any unpaid charge payable under article [43];
- (ii) any unpaid licence fee payable under article [16]; and

(iii) the expenses of removal and disposal under this paragraph;

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

(3) If the owner of a vessel removed under paragraph (2) is unknown and cannot after diligent inquiry be found, the Commissioners may apply to the Magistrates' Court for an order giving the appropriate directions as to the disposal by the Commissioners of any surplus proceeds of sale.

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

Removal of obstructions other than vessels and vehicles

18.—(1) Without prejudice to its powers under this Order or any other enactment the Commissioners may remove anything (other than a vessel or a vehicle but including a wreck within the meaning of Part 9 of the 1995 Act) which is causing or likely to become an obstruction or impediment to the proper use of any part of the harbour.

(2) If anything removed by the Commissioners under paragraph (1) is known to the Commissioners to be, or is so marked as to be readily identifiable as, the property of any person, the Commissioners must, within one month of their coming into its custody, give notice in accordance with paragraph (6) to that person and, if possession of the thing is not retaken within the period specified in and in accordance with the terms of the notice, it will at the end of that period vest in the Commissioners.

(3) If the ownership of anything removed by the Commissioners under paragraph (1) which is not known or marked is not within three months of its coming into the custody of the Commissioners proved to their reasonable satisfaction, it will vest in the Commissioners.

(4) The Commissioners may, at such time and in such manner as they think fit, dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Commissioners under this article, and if it is sold the proceeds of sale will be applied by the Commissioners in payment of the expenses incurred by them under this article in relation to the thing, and any balance—

- (a) must be paid to any person who within three months from the time when the thing came into the custody of the Commissioners proves to the reasonable satisfaction of the Commissioners ownership of that thing at that time; or
- (b) if within the relevant period no person proves their ownership, it will vest in the Commissioners.

(5) If anything removed under this article—

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

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

(6) A notice given under paragraph (2) must specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Commissioners possession may be taken at a place and time specified in the notice, being not less than 14 days after the date when the notice is served.

(7) The Commissioners must not under the powers of this article remove anything placed or constructed by any person under the provisions of any enactment or of a consent or licence given or issued by the Commissioners.

Power to remove goods

19.—(1) If any goods are left in any part of the harbour the Commissioners may require the owner of the goods to remove them and, if the goods are not so removed within six hours after such requirement, the Commissioners may cause them to be removed to their own location or any other public place at the absolute discretion of the Commissioners. provided that—

- (a) notwithstanding such removal on behalf of the Commissioners, the goods are liable to a general lien for the cost of removal and for any charges payable to the Commissioners by the owner in relation to such goods under article [43]; and
- (b) the power of the Commissioners for preventing the recovery of the goods until the cost of removal and the charges have been paid extend and apply to any goods removed or placed in store under the powers of this article.

(2) In this article "goods" includes fish or fishing tackle.

Power to give directions as to loading or unloading of certain goods

20.—(1) The Commissioners may designate any dock, wharf or other works, or any portion of it or them, for the loading and unloading of any goods to which this article applies.

(2) Where pursuant to paragraph (1) of this article the Commissioners have designated a place for the loading or unloading of goods of any description the harbour master may direct that goods of that description, intended to be loaded onboard or unloaded from a vessel, must not be deposited or received elsewhere than at the place so designated, and in the event of any person disobeying any such direction the Commissioners may remove the goods to the place so designated, and any expense incurred by the Commissioners in so doing may be recovered by it from that person as a debt in any court of competent jurisdiction.

(3) The goods to which this article applies are goods in bulk and goods the nature or character of which is such as, in the opinion of the Commissioners, to give rise to special risk of contamination, taint, stain, injury or danger to other goods or to any person who may come into contact with them whether or not doing so lawfully or with or without permission to do so.

Power to appropriate parts of harbour

21.—(1) The Commissioners may set apart and appropriate any part of the harbour premises for the exclusive or preferential use and accommodation of any particular trade, activity, person, vessel or class of vessels, or goods, subject to such terms, conditions and regulations as the Commissioners think fit.

(2) No person or vessel may make use of any part of the harbour premises set apart or appropriated under this article without the consent of the harbour master.

(3) The harbour master may order any person or vessel without consent under paragraph (2) to leave or be removed from any part of the harbour premises set apart or appropriated under this article.

(4) The provisions of section 58 (powers of harbour master as to moving of vessels in harbour) of the 1847 Act extend and apply with the necessary modifications to and in relation to any vessels ordered to leave or be removed under paragraph (3).

(5) Nothing in this article authorises the prohibition of navigation within any part of the harbour, nor does it authorise interference with the public right of way across public slipways and public quays.

Life-saving craft and appliances

22.—(1) For the purpose of saving life the Commissioners may provide and maintain in or in the vicinity of the harbour—

- (a) boats or other vessels together with all necessary apparatus and equipment and buildings, structures, slipways and moorings for their operation, maintenance or accommodation; and

- (b) lifebuoys, lifelines and other life-saving appliances together with structures for their storage and safekeeping.

(2) The Commissioners may enter into arrangements with any person for the provision and maintenance of any of the facilities authorised by paragraph (1).

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

23.—(1) The Commissioners may, in accordance with the requirements of article [24], give a direction for—

- (a) promoting or securing conditions conducive to the ease, convenience or safety of navigation;
- (b) the safety of persons;
- (c) the protection of property, flora or fauna;
- (d) the ease, convenience or safety of harbour operations ashore; or
- (e) the prevention or amelioration of environmental harm,

within the harbour.

(2) A direction given under paragraph (1) 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 of it;
- (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 in relation to the matters referred to in subparagraphs (a), (b), (c), (d) and (e), including its geographical extent.

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

(4) The Commissioners must keep and make available at its main office^(a) and on its website^(b) a public register of all general directions in force.

Procedure for giving, amending or revoking general directions

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

- (a) give notice in writing of the proposal and a plan of the area over which the proposal applies to the “designated consultees”, being—
 - (i) the Chamber of Shipping.
 - (ii) the Royal Yachting Association, and
 - (iii) such other persons or organisations as the Commissioners consider appropriate for the purposes of the application of this provision;
- (b) place a notice of the proposal on the Commissioners’ website and in prominent locations at the Commissioners’ main office on the same date as the notice given in accordance with subparagraphs (a) and keep those notices on display for a minimum of 6 weeks;

(a) 1 Harbour Road, Seahouses, NE68 7RN
(b) www.nsh.org.uk

- (c) consult with the designated consultees upon the proposal and allow a period of not less than 6 weeks from the date of the notice given in accordance with sub-paragraphs (a) and (b) for written representations to be made by the designated consultees to the Commissioners regarding the proposal;
 - (d) have regard to any representations made by designated consultees during the consultation;
 - (e) give notice in writing to the designated consultees following the consultation as to whether the Commissioners propose to proceed with the proposal and, if so, specifying whether they are making any modifications to the proposal and their reasons for so doing; and
 - (f) if the Commissioners propose to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days from the date of the notice given in accordance with sub-paragraph (e), or such longer period as the Commissioners may specify.
- (2) Where the Commissioners have complied with paragraph (1), they may proceed with the proposal if—
- (a) none of the designated consultees has made representations against the proposal;
 - (b) none of the designated consultees which made representations against the proposal has confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(f); or
 - (c) where at least one designated consultee has maintained an objection in accordance with paragraph (1)(f), the requirements of paragraph (3) have been complied with.
- (3) Where at least one designated consultee has confirmed in writing to the Commissioners that they maintain their objection to the proposal—
- (a) the issue must be referred to an independent person (the “adjudicator”) appointed—
 - (i) by agreement between the Commissioners and each designated consultee maintaining an objection in accordance with paragraph (1)(f) (the “parties”); or
 - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of any of the parties;
 - (b) so far as is reasonably practicable within 12 weeks beginning from the date of the referral, the adjudicator must—
 - (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing; and
 - (ii) make a written report to the parties with findings and recommendations on the issue; and
 - (c) the Commissioners must decide whether to proceed with the proposal having regard to the adjudicator’s report (but they are not bound to give effect to any recommendations) and, once they have decided, must give notice in writing to the designated consultees of their decision and the reasons for that decision.
- (4) Except as otherwise provided for in paragraph (3), the adjudicator may determine the procedure for the making of representations and the conduct of any hearing.
- (5) The costs incurred by the adjudicator and the parties from a referral under paragraph (3) are to be paid by one or more of the parties as the adjudicator may direct.
- (6) If the Commissioners wish to proceed with the proposal in a form materially different from both the form notified to the designated consultees under paragraph (1)(e) and (where paragraph (3) applies)

the form recommended by the adjudicator under paragraph (3)(b), they must proceed, unless all the designated consultees agree in writing that they need not, as if the proposal were a new proposal to which paragraph (1) applies.

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

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

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

- (a) as soon as is practicable give notice of the direction, amendment or revocation 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 three months or the revoked direction is not intended to be restored within that period, apply the procedure under paragraphs (1)(c) to (f) and (2) to (6) to the direction, amendment or revocation 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)(c), for “sub-paragraph (a) and (b)” substitute “paragraph (8)(a)”; and
 - (iii) a reference in those paragraphs to the Commissioners proceeding with a proposal is to be read as a reference to the Commissioners determining that the direction or amendment should remain in force or the revoked direction should not be restored.

Publication of general directions

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

(2) The notice referred to in paragraph (1) must state a place at which copies of the general direction may be inspected.

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

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

(a) www.nsh.org.uk

Special directions as to use of the harbour, etc.

26.—(1) In addition to the directions which the harbour master may give under section 52 of the 1847 Act the harbour master may give a special direction under this article to a vessel anywhere within the harbour for any of the following purposes—

- (a) requiring a person to comply with a requirement made in or under—
 - (i) a general direction;
 - (ii) a provision of the North Sunderland Harbour Orders 1931 to 20[]; or
 - (iii) a byelaw or other enactment of local application to the harbour or to the Commissioners;
 - (b) regulating or requiring the movement, anchoring, berthing, mooring or unmooring of a vessel;
 - (c) requiring the removal of a vessel from any part of the harbour if—
 - (i) it is on fire;
 - (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;
 - (iii) it is making an unlawful use of the harbour or interfering with the reasonable use or enjoyment of the harbour by other persons or vessels or the carrying on of business in the harbour;
 - (iv) it is necessary to enable maintenance or repair work to be carried out in the harbour or to premises adjacent to the harbour; or
 - (v) its removal is considered by the harbour master to be necessary in order to ensure the safety of persons or the protection of property, flora or fauna or of any part of the harbour referred to in paragraph (3);
 - (d) regulating the loading, discharging, storing or safeguarding of the cargo, fuel, water or stores of a vessel and the discharge of its business at the harbour;
 - (e) specifying the precautions to be taken in respect of apparatus, machinery and equipment;
 - (f) regulating the speed of a vessel;
 - (g) regulating the use of the motive power of a vessel;
 - (h) prohibiting or restricting the use of fires or lights; or
 - (i) as to the discharge or use of ballast.
- (2) The harbour master may give a direction which applies to—
- (a) a person;
 - (b) all vessels; or
 - (c) all vessels of a particular class

within the harbour for one or more of the purposes in paragraph (1)(a).

(3) A special direction may be given in the interests of the conservation of, or prevention of damage to, any part of the harbour where that part has been designated, or otherwise 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.

(4) A special direction may be given in any manner considered by the harbour master to be appropriate and, where it is in respect of a vessel, must be addressed to the master of that vessel.

(5) Where a special direction is to be given which applies to a person, the harbour master must, where possible, specify a particular person to whom the direction is addressed, either by name or by a description sufficient to enable the person to be readily identified.

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

Master's responsibility to be unaffected

27. The giving of a general direction or a special direction does 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 that vessel, to persons on board the vessel, to the cargo or to any other person or property.

Failure to comply with directions

28.—(1) A person who fails without reasonable excuse to comply with a general direction or special direction is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) In any proceedings for an offence under paragraph (1) it will 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 special directions

29.—(1) Without prejudice to any other remedy available to the Commissioners, if a special direction applying to a vessel is not complied with within a reasonable time the harbour master may board the vessel or 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; but the harbour master must not do so unless, after reasonable inquiry has been made, the master cannot be found.

(3) Except in an emergency, the powers conferred by paragraphs (1) and (2) may only be exercised at least 48 hours after the giving of the special direction.

(4) Reasonable expenses incurred in the exercise of the powers conferred by this article are recoverable by the Commissioners from the owner of the vessel.

Byelaws as to harbour

30.—(1) In addition to the byelaws which may be made by the Commissioners under section 83 of the 1847 Act, the Commissioners may make byelaws for the good rule and government of the harbour and for the conservation of the natural beauty of all or any part of the harbour or of any of the fauna, flora or geological, physiographical or other natural features in the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may be made for all or any of the following purposes—

- (a) for regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, approaches, slipways, landing places, docks, berths, wharves, staithe, warehouses, sheds, equipment, conveniences (including moorings), berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities provided by the Commissioners;
- (b) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons in the harbour;
- (c) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour, and at the premises of the Commissioners;

- (d) for regulating the conduct of all persons in the harbour, not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties as such;
- (e) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specification of moorings;
- (f) for preventing or removing obstructions or impediments within the harbour;
- (g) for regulating the launching of vessels within the harbour;
- (h) for regulating or prohibiting the mooring, careening, beaching, maintenance, repair or anchoring and keeping of vessels in the harbour;
- (i) for regulating or preventing the use in the harbour or on board any vessel of fires, lights or any other equipment, tools or appliances which the Commissioners consider involves a risk of fire and for the prevention of smoking;
- (j) for regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse) and sewage from vessels in the harbour;
- (k) for the prevention of the disposal of such rubbish and sewage in the harbour;
- (l) for prohibiting the use of or regulating the movement, speed and parking of vehicles within the harbour;
- (m) for requiring the use of effectual silencers and the general control of noise on vessels in the harbour;
- (n) for regulating vessels in the harbour and their entry into and departure from the harbour and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, vessels using, navigating or mooring within the harbour;
- (o) for regulating the embarkation of persons into, or their disembarkation from, vessels within the harbour;
- (p) for prescribing steering and sailing rules for the regulation of vessels used or navigated within or entering or leaving the harbour;
- (q) for regulating the fuelling of vessels in the harbour;
- (r) for regulating the holding of regattas and other public events in the harbour;
- (s) for prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground within the harbour;
 - (ii) by devices used for marking obstructions within the harbour;
 - (iii) for assisting the navigation of vessels within the harbour, at the entrance to any dock or at any wharf, pier or other work;
- (t) for the prevention of nuisances in the harbour;
- (u) for prohibiting or regulating the discharge by land or sea of any material or thing within the harbour;
- (v) for regulating or prohibiting fishing for marine creatures of any type and by whatever means from any pier, jetty, wharf, or other installation or structure of any kind within the harbour or from any vessels within the harbour;
- (w) for regulating or prohibiting aquaplaning, jet skiing, water skiing, flyboarding or diving or other recreational activities in the harbour, but not as to prohibit the use for navigation of

yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft, personal watercraft and other small craft;

- (x) for regulating or prohibiting bathing, and for securing the protection of bathers, within the harbour;
- (y) for requiring the reporting of accidents and of other incidents giving rise to the risk of death or injury, or damage to property, occurring in the harbour;
- (z) for regulating or prohibiting the carrying on of trading or commercial activities in the harbour;
- (aa) for 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 harbour master;
- (bb) for prohibiting or restricting the bringing of animals onto harbour premises and for regulating the control of animals in the harbour;
- (cc) for regulating the equipment of vessels and requiring vessels to carry specified equipment in the interests of safety;
- (dd) for regulating or prohibiting the use by vehicles of the foreshore within the harbour;
- (ee) for regulating the use of or requiring the registration of ferries, water taxis and passenger boats in the harbour and the conduct of boatmen, ferrymen and others plying for hire in the harbour; and
- (ff) for regulating the exercise of the powers vested in the harbour master.

(3) In this article “signals” includes sound signals.

(4) Byelaws made under this article or under section 83 of the 1847 Act may be expressed to be applicable within all or any part of the harbour and different byelaws may be made in relation to different classes of vessels.

(5) Byelaws made by the Commissioners under this article may contain provisions imposing upon a person offending against any byelaw a fine on summary conviction not exceeding level 4 on the standard scale.

(6) Where a person is charged with an offence against a byelaw in force under this article, it will be a defence for the person to prove—

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

Confirmation of byelaws

31.—(1) The provisions contained in subsections (3) to (8) of section 236 and section 238 of the Local Government Act 1972^(a) apply to all byelaws made by the Commissioners under article [30] or any other enactment.

(2) In its application to byelaws made by the Commissioners under article [30] subsection (7) of the said section 236 is to be construed as if it had been amended by the insertion of the words “with or without modifications” after the word “confirm” in the first place where that word occurs.

(a) 1972 c. 70

(3) Where the confirming authority proposes to make a modification which appears to it to be substantial, then—

- (a) it must inform the Commissioners and require them to take any steps it thinks necessary for informing persons likely to be concerned with that modification; and
- (b) it must not confirm the byelaws until there has elapsed such a period as it thinks reasonable for the Commissioners and other persons who have been informed of the proposed modification to consider and comment on the proposal.

(4) The confirming authority for the purposes of this article and of the said section 236 in its application to byelaws made by the Commissioners is the Secretary of State.

Revocation of byelaws

32.—(1) The Commissioners may from time to time make byelaws for the revocation of byelaws made under the North Sunderland Harbour Orders 1931 to 20[] in accordance with the procedure set out in this article rather than the procedure to which those previously made byelaws were subject.

(2) Byelaws made under this article must be made under the common seal of the Commissioners, and do not have effect until the requirements of this article have been satisfied.

(3) Upon the byelaws having been made, notice of the same must be given in one or more local newspapers circulating in the area to which the byelaws apply.

(4) For at least one month after the making of the byelaws, a copy of the byelaws must be deposited at the offices of the Commissioners and must at all reasonable hours be open to public inspection without payment.

(5) The Commissioners must have regard to all representations received during the period when the byelaws have been made available for public inspection under paragraph (4), in order to decide whether to confirm the byelaws, with or without amendments.

(6) A copy of the byelaws, when confirmed by the Commissioners, must be printed and deposited at the offices of the Commissioners, and must at all reasonable hours be open for public inspection without payment.

General rules for navigation

33. A master who navigates a vessel in the harbour—

- (a) without due care and attention; or
- (b) in a manner liable to injure or endanger persons, other vessels, the banks of the harbour (whether above or below the level of high water) or any facility, structure or installation in or adjoining the harbour,

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

Vessels adrift

34.—(1) The owner or master of a vessel adrift in the harbour will be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) It will be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on their part.

Power to deal with abandoned vessels

35.—(1) In addition to the powers conferred on the harbour master by section 57 of the Act of 1847 and on the Commissioners by the 1995 Act and by this Order the Commissioners may remove, sell,

destroy or otherwise dispose of a vessel that has been abandoned, laid by or neglected anywhere within the harbour.

(2) The Commissioners may retain out of the proceeds of sale of such a vessel expenses incurred by it in respect of the vessel, or in marking, buoying, lighting or otherwise controlling the vessel or warning shipping of its presence and expenses incurred by the harbour master under section 57 of the Act of 1847 and must pay the surplus, if any, to the person entitled thereto.

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

(4) Except in the case of emergency, the Commissioners must, before exercising its powers under this article, give 28 clear days' notice in writing of its intention to do so to the owner of the vessel and by advertisement in each of three successive weeks in a local newspaper.

(5) If the owner or their place of business or abode is not known to the Commissioners or cannot after diligent inquiry be found or is outside the United Kingdom, the notice may be given by displaying it at the offices or the Commissioners for the period its duration.

(6) Where the Commissioners have exercised their powers under section 252 of the 1995 Act in relation to a vessel sunk, stranded or abandoned the Commissioners may recover from the owner of such vessel as a simple contract debt any expenses reasonably incurred by the Commissioners under that section in relation to the vessel that are not reimbursed out of any proceeds of sale within the meaning of that section.

Power to licence tugs

36.—(1) A person must not, except in an emergency, operate a vessel exceeding 5 tonnes gross for fee or reward for the purpose of moving or controlling the movement of any other vessel within the harbour except under and in accordance with the terms and conditions of a licence granted by Commissioners.

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

(3) Any person who contravenes paragraph (1) above will be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Boarding of vessels

37. A duly authorised officer of the Commissioners may, on producing written authority if so required, enter and inspect a vessel in the harbour—

- (a) for the purposes of any enactment relating to the harbour (including any enactment so relating contained in subordinate legislation) or of any byelaw of the Commissioners relating to the harbour, including its enforcement;
- (b) to prevent or extinguish fire,

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

Obstruction of officers

38.—(1) Any person who—

- (a) intentionally obstructs or threatens an officer of the Commissioners acting in pursuance of the performance of their functions under this Order;

- (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 which that officer may reasonably require for the purpose of the performance of their functions;

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

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

Notice before entry of dangerous goods

39.—(1) Except in case of emergency, the owner or master of a vessel which it is intended to bring into the harbour carrying any dangerous goods must comply in all respects with the Dangerous Goods in Harbour Areas Regulations 2016^(a) and must in so complying, not less than 24 hours before the intended entry of the vessel into the harbour or, in the case of a voyage of less than 24 hours not later than the commencement of that voyage, give notice to the harbour master of the nature and quantity of such goods and if such notice is not given the owner or master is guilty of an offence and liable on summary conviction to a fine to level 4 on the standard scale.

(2) Where the owner or master of a vessel is charged with an offence under paragraph (1) of this article it will be a defence that they did not know and could not with reasonable diligence have ascertained the nature of the goods in respect of which the proceedings are taken.

Removal of vehicles

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

- (a) in any place where it is likely to obstruct or interfere with the use of the harbour;
- (b) on any part of the harbour premises where the parking of vehicles is prohibited by a sign displayed by the Commissioners; or
- (c) in a parking place provided by the Commissioners within the harbour premises, for a longer period than 24 hours or such other period as may be specified in a sign displayed by the Commissioners;

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

(2) Any sign erected under paragraph (1)(b) or (c) must be conspicuously displayed at or close to the place to which it relates.

(3) Where the Commissioners in exercise of the powers of this article remove a vehicle or causes it to be removed the Commissioners must as soon as practicable inform the police.

(4) The reasonable expenses of and incidental to the removal and retention of a vehicle under this article are recoverable from any person responsible.

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

- (a) the owner of the vehicle at the time when it was put in the place from which it was removed under paragraph (1), unless the owner shows that they were not concerned in, and did not know of, its being put there;
- (b) any person by whom the vehicle was put in that place; or

(a) S.I. 2016/721

- (c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978^(a) in consequence of the putting of the vehicle in that place.

(6) If the Commissioners in exercise of the powers of this article remove a vehicle to a place not readily visible from the place from which it was removed they must, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle at the owner's last known address, registered address or the address where the vehicle is ordinarily kept, notice that the Commissioners have exercised the powers of this article and of the place to which the vehicle has been removed.

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

(8) For the purposes of paragraphs (1) to (6), "vehicle" includes a vessel lying on a trolley or trailer.

Immobilisation of vehicles illegally parked

41.—(1) If a vehicle is left on the harbour premises in contravention of article [40] an authorised officer of the Commissioners may—

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

(2) The person fixing the device must also affix to the vehicle a notice—

- (a) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device;
- (b) specifying the steps to be taken in order to secure its release; and
- (c) giving such other information as may be prescribed by the Commissioners.

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

(4) Subject to paragraph (3), a vehicle to which an immobilisation device has been fixed in accordance with this article must be released from that device on payment in any manner specified in the notice affixed under paragraph (2), of such charge in respect of the release as the Commissioners may prescribe.

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

(6) Where a vehicle is moved in accordance with this article before an immobilisation device is fixed to it, any power of removal under article [40] which was exercisable in respect of that vehicle immediately before it was so moved continues to be exercisable while the vehicle remains in the place to which it was so moved.

(7) In this article "immobilisation device" means any device or appliance which is approved as an immobilisation device for the purposes of section 104 of the Road Traffic Regulation Act 1984^(b).

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

(a) 1978 c. 3
(b) 1984 c. 27

Parking places

42. The Commissioners may provide facilities within the harbour for the parking of vehicles and for that purpose may erect barricades or fencing with relative offices, waiting rooms, and other conveniences and may make reasonable charges for the use of such facilities.

PART 4 CHARGES

Charges other than ship, passenger and goods dues and for services or facilities

43.—(1) The Commissioners may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig, or floating platform or any other vessel not being a ship as defined by section 57 of the 1964 Act entering, using or leaving the harbour such reasonable charges as they may determine and sections 30 and 31 of the 1964 Act will with all necessary modification apply to the charges authorised by this article as they may apply to ship, passenger and goods dues demanded under section 26 of the 1964 Act.

(2) In addition to their power to demand ship, passenger and goods dues under section 26 of the 1964 Act, the Commissioners may demand, take and recover such reasonable charges or other consideration for services and facilities provided by or on behalf of the Commissioners within the harbour as they may from time to time determine.

Payment of charges

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

(2) Charges payable to the Commissioners are payable by the owner of any vessel or goods in relation to which the charges are payable.

(3) Where charges payable to the Commissioners may be recovered by them from more than one person, the persons from whom they may be recovered are jointly and severally liable.

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

(5) An officer of the Commissioners may prevent a vessel from using a landing place provided by the Commissioners if the master of the vessel refuses to pay the charges for such use.

Recovery of charges

45. In addition to any other remedy given by this Order (and, in a case where the master of a vessel in respect of which a charge is payable to the Commissioners refuses or neglects to pay the same or any part of it, whether or not the Commissioners' collector has gone on board the vessel and demanded the charge pursuant to section 44 of the 1847 Act), the Commissioners may recover any charges payable to them as a debt in any court of competent jurisdiction.

Compounding arrangements and rebates

46.—(1) The Commissioners may confer total or partial exemption from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the 1964 Act requires the Commissioners to include in the list of ship, passenger and goods dues kept at the harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

Deposit for charges

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

(2) Where such a person fails to deposit or guarantee the sum of money required the Commissioners may detain in the harbour the vessel or goods in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

Liens for charges

48.—(1) A person who by agreement with the Commissioners collects charges on their behalf and who pays or gives security for the payment of charges on goods in that person's possession has a lien on those goods for the amount paid or security given in respect of it.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Commissioners give security for charges on goods in the wharfinger or carrier's custody, and in that event the wharfinger or carrier has a like lien on the goods for the amount of those charges as the wharfinger or carrier would have in respect of charges for safe custody or carriage of the goods, as the case may be.

Information for the purpose of landing charges

49.—(1) When any passengers are embarked on or disembarked from or cargo loaded onto or unloaded from a vessel within the harbour the owner or master of the vessel, if requested to do so by the harbour master, must provide to the harbour master details in writing of the number of persons embarking on or disembarking from the vessel and the weight, quantity, volume and composition of cargo being loaded onto or unloaded from the vessel so as to enable the harbour master to determine whether any of the Commissioners' published landing fees or other charges are payable in respect of those persons or cargo, in accordance with section 26(2) of the 1964 Act.

(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) must provide the details so requested within such period (being not less than 24 hours) after the arrival of the vessel as may be specified by the harbour master, and in any event prior to the departure of the vessel.

(4) Paragraph (1) does not apply in relation to non-commercial vessels occupying moorings within the harbour under licences granted by the Commissioners, nor 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—

- (a) fails to comply with any requirement made under paragraph (1), or
- (b) who in compliance with such a requirement provides any information which they know to be false, or recklessly provides information which is false in any material particular,

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

Harbour master may prevent sailing of vessels

50. The harbour master may prevent the removal or sailing from the harbour of any vessel until evidence has been produced to the harbour master of the payment of any charges payable in respect of the vessel or of its passengers or of any goods imported or exported (and in the case of a vessel with a take or cargo of fish until the master or owner of the vessel has given in the statement of their take or cargo of fish required by article [49]).

Exemptions from dues

51. Except as may be agreed between the Commissioners and the lifeboat service concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Commissioners to levy dues authorises them to levy dues on a vessel belonging to or used by a lifeboat service whilst employed in or in connection with the functions of that service.

PART 5

CONTROL OF WORKS AND DREDGING

Restriction of works and dredging

52.—(1) Subject to paragraph (3), no person other than the Commissioners is permitted, in the harbour, to—

- (a) construct, alter, renew or extend any works; or
- (b) dredge,

unless that person is licensed so to do, in the case of works by a works licence and in the case of dredging by a dredging licence, nor except upon the terms and conditions, if any, upon which the licence is granted and in accordance with plans, sections and particulars approved in pursuance of article [54] of this Order or, as the case may require, article [55] of this Order.

(2) the Commissioners may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site to its former condition; and if that person fails to comply with the notice, the Commissioners may carry out the works so required and may recover from that person the cost of so doing.

(3) Nothing in this article applies to—

- (a) any operations or works specifically authorised by any enactment; or
- (b) any operations or works of a statutory undertaker.

(4) Any person who without reasonable excuse contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Control of certain operations and works of statutory undertakers

53.—(1) This article applies to any operations or works in the harbour of a statutory undertaker on, under or over tidal waters or land below the level of high water, not being operations or works which are specifically authorised by an enactment.

(2) Subject to paragraph (3), a statutory undertaker must not carry out any operations or works to which this article applies unless it has given notice of its intention to do so to the Commissioners and has supplied the Commissioners with such particulars as they may reasonably require.

(3) Where, in an emergency, it is impracticable to give notice as required by paragraph (2), the statutory undertaker must inform the Commissioners of the operations or works as soon as reasonably practicable.

(4) Any operations or works to which this article applies must be carried out subject to any directions which may from time to time be given by the Commissioners to the statutory undertaker, being directions for the avoidance of danger and the prevention, so far as possible, of interference with navigation in the carrying out of such operations or works.

(5) Any person who, without reasonable excuse, contravenes this article is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Licensing of works

54.—(1) The Commissioners may upon such terms and conditions as they think fit grant to any person a licence (“a works licence”) to construct, place, alter, renew or maintain any works in the harbour on, under or over tidal waters or land below the level of high water, notwithstanding any interference with public rights of navigation or other public rights by such works as constructed, placed, altered, renewed, or maintained.

(2) Application for a works licence must be made in writing to the Commissioners and must—

- (a) be accompanied by plans, sections and particulars of the works to which the application relates;
- (b) specify whether the applicant holds such rights in, under or over land as are necessary to enable the applicant to enjoy the benefits of the works licence and, if not, the action taken or to be taken to enable the applicant to obtain such rights if the works licence is granted.

(3) In granting a works licence, the Commissioners may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) The Commissioners may require an applicant for a works licence, on making an application, to pay a reasonable fee in respect of the administrative expenses of dealing with the application.

(5) As a condition of the granting of a works licence, the Commissioners may require a licensee, being an applicant to whom a works licence has been granted or their successor, where works are constructed pursuant to the works licence, to pay such reasonable fees in respect of the Commissioners’ administrative expenses and overheads in supervising or inspecting where necessary the construction or maintenance of the works.

(6) If the Commissioners decide to grant a works licence they must give notice of their decision to the applicant.

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

(8) Where the Commissioners grant a works licence upon terms or conditions or require any modification in the plans and particulars, they must give reasons in writing for the terms and conditions imposed or the modifications required.

(9) If within three months from the date of making an application under paragraph (2) (or such longer period as may be agreed between the applicant and the Commissioners) the Commissioners do not notify the applicant of their decision whether to grant a works licence, the Commissioners will be deemed to have refused the application.

(10) Articles [57 to 62] of this Order apply in relation to the holder of a works licence as respects the works which are authorised by the works licence as they do in relation to the Commissioners as respects tidal works with all references to the Commissioners being substituted by references to the holder of the works licence.

(11) The grant of a works licence under this article has effect for the purposes of article [52] and confers no other authority for the carrying out of the operations covered by the works licence.

(12) In the carrying out of operations in pursuance of a works licence, the holder of the works licence must not—

- (a) interfere with, damage or otherwise injuriously affect any apparatus belonging to or maintained by any statutory undertaker; or
- (b) do anything which will obstruct or impede any work relating to the inspection or repair of any such apparatus,

without the consent of the statutory undertaker concerned.

Licence to dredge

55.—(1) The Commissioners may upon such terms and conditions as they think fit grant to any person a licence to dredge in any part of the harbour.

(2) Application for a dredging licence must be made in writing to the Commissioners and must be accompanied by plans, sections and particulars defining the nature, extent and manner of the operations in respect of which the application is made.

(3) In granting a licence, the Commissioners may require modifications in the plans, sections and particulars submitted to them by the applicant.

(4) Paragraphs (4) to (9) and (12) of article [54] of this Order apply in relation to a dredging licence as they apply in relation to a works licence.

(5) The grant of a licence under this article has effect for the purpose of article [52] and confers no other authority for the carrying out of the operations covered by the licence.

(6) Unless otherwise agreed by the Commissioners any materials (other than wreck within the meaning of section 255(1) of the 1995 Act) taken up or collected by means of dredging in pursuance of a dredging licence must, in so far as they are not the property of the Commissioners before being taken up and collected, but subject to the provisions of article [54], become the property of the Commissioners, and the Commissioners may use, appropriate or dispose of any such material.

Appeals in respect of works or dredging licences

56.—(1) Where—

- (a) the Commissioners have refused to grant a works licence or a dredging licence and the applicant for the licence is aggrieved by the refusal; or
- (b) the Commissioners have granted such a licence upon terms or conditions or have required modifications to be made in the plans, sections and particulars submitted by the applicant, and the applicant is aggrieved by the Commissioners' decision as to such terms or conditions, or as to such modifications,

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 articles [54 or 55], deemed to have refused the application, as the case may be, appeal to the Secretary of State.

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

(3) A person who appeals to the Secretary of State under this article must at the same time send a copy of the statement of appeal to the Commissioners and the Commissioners must 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 provide the Secretary of State with their observations on the appeal.

(4) On appeal under this article the Secretary of State may confirm, vary or revoke the decision appealed against and may require any such consequential amendments to be made, including amendment of the terms and conditions or modifications of plans, sections and particulars.

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

Tidal works not to be executed without approval of the Secretary of State

57.—(1) A tidal work must not be constructed, reconstructed, extended, altered, enlarged, replaced or re-laid except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by them before the work is begun.

(2) If a tidal work is constructed, reconstructed, extended, altered, enlarged, replaced or re-laid in contravention of paragraph (1) or of any condition or restriction imposed under the said paragraph—

- (a) the Secretary of State may by notice in writing require the Commissioners at their own expense to remove the tidal work or any part of it and restore the site to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Commissioners, they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary so to do, the Secretary of State may remove the tidal work, or part of it, and restore the site to its former condition,

and any expenditure incurred by the Secretary of State in doing so is recoverable from the Commissioners.

Lights on tidal works during construction

58.—(1) The Commissioners must at or near a tidal work during the whole time of its construction, extension, enlargement, alteration, replacement or relaying, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State from time to time directs.

(2) If the Commissioners fail to comply with any direction given under paragraph (1), they are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Provision against danger to navigation

59.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the Commissioners must as soon as reasonably practicable notify Trinity House and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to notify Trinity House as required by paragraph (1) or to comply with any requirement of a direction under it, the Commissioners are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

Abatement of works abandoned or decayed

60.—(1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Commissioners at their own expense either to repair and restore the work or any part of it, or to remove the work and restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such a condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion of it, in any notice under paragraph (1).

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Commissioners, the Commissioners have failed to comply with the requirements of the notice, the Secretary of State may execute the work specified in the notice and any expenditure incurred by them in doing so is recoverable from the Commissioners.

Survey of tidal works

61. If the Secretary of State deems it expedient to do so, they may order a survey and examination of a tidal work or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination is recoverable from the Commissioners.

Permanent lights on tidal works

62.—(1) After the completion of a tidal work the Commissioners must at the outer extremity exhibit every night from sunset to sunrise such lights, if any, and take such other steps, if any, for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) If the Commissioners fail to comply in any respect with a direction given under paragraph (1) they are guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

PART 6

MISCELLANEOUS

Power to grant tenancies and to dispose of land

63.—(1) The Commissioners may grant licences, tenancies and leases for a term of any land within the harbour so far as it considers desirable in the interests of efficient and economical management of the harbour.

(2) The Commissioners may also dispose of any interest in land within the harbour which it considers to be surplus to that required by it for the purposes of the harbour undertaking.

Commercial activities and development, etc. of land

64.—(1) The Commissioners may carry on a trade or business of any kind that conduces to the efficient and economical performance by the Commissioners of the management of the harbour including a trade or business carried on in conjunction with another person.

(2) Without prejudice to the generality of paragraph (1) the Commissioners may form, invest in and promote, or join with any other person in forming, investing in and promoting, companies for investing in, using or developing for any purpose, or for carrying on any trade or business in, the harbour.

(3) The Commissioners may (alone or with others) develop land not required for the purposes of the harbour undertaking with a view to disposing of the land or interests in it, and may acquire land by agreement for the purpose of developing it with such land.

Borrowing powers

65. The Commissioners may from time to time borrow, by any methods they see fit, such sums of money as they think necessary for the purposes of meeting their obligations in carrying out their functions; and where moneys are borrowed by the Commissioners under this article, the Commissioners may, if they see fit, borrow those moneys upon the security of their assets for the time being or of their revenues or of both their assets and their revenues.

Defence of due diligence

66.—(1) In proceedings for an offence under any provision of this Order mentioned in paragraph (2), it will be a defence for the Commissioners to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article [57];
- (b) article [58];
- (c) article [59]; and
- (d) article [62].

(3) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Commissioners are not, without leave of the court, entitled to rely on that defence unless, within a period of at least seven clear days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in their possession.

Crown Rights

67.—(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 authorises any person to take, use, enter upon or in any manner interfere with, any land or interest in land (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or harbour) belonging to—

- (a) 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) a government department, or held in trust for Her Majesty for the purposes of a government department, without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally, or subject to terms and conditions.

(3) For the purposes of this article, “government department” includes the Secretary of State where appropriate.

Saving for Trinity House

68. Nothing in this Order prejudices or derogates from the rights, duties or privileges of Trinity House.

Notices

69.—(1) Except where this Order expressly provides otherwise a notice or other document required or authorised to be served for the purposes of this Order, or any direction given under this Order, must be in writing and must be served by first class 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 that person 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 them 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 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 them 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 (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 served pursuant to sub-paragraph (b) it may be served by displaying it at the office of the harbour master for the period of its duration.

Amendment and repeal

70.—(1) The 1931 Order is amended as follows—

- (a) in article 4 (Interpretation) after the definition of “the harbour” insert the definition of “harbour premises” in article 2 (Interpretation) of this Order;
- (b) in article 4 (Interpretation) after the definition of “the harbour premises” insert the definition of “level of high water” in article 2 (Interpretation) of this Order;
- (c) in article 4 (Interpretation) for the definition of “vessel” substitute the definition of “vessel” in article 2 (Interpretation) of this Order;
- (d) in sub-paragraph (i) of paragraph 1 of article 23 (Limits of harbour) for “the area below high-water mark of ordinary spring tides lying within the following imaginary lines that is to say an imaginary line commencing at a point at high-water mark of ordinary spring tides on the seashore about 155 yards measured in a westerly direction from the south-west or shore end of the old north-west pier and thence proceeding due north in a straight line for a length of

(a) 1978 c. 30

250 yards and thence true east for a further length of 740 yards and thence proceeding due south for a length of about 610 yards to a point on the shore at high-water mark of ordinary spring tides 240 yards or thereabouts measured in a south-easterly direction from the Sea Houses Point” substitute sub-paragraph (a) of paragraph 1 of article 12 of this Order;

- (e) for sub-paragraph (ii) of paragraph 1 of article 23 (Limits of harbour) substitute sub-paragraph (b) of paragraph 1 of article 12 of this Order; and
- (f) for paragraph 2 of article 23 (Limits of harbour) substitute “For the purposes of this Order the expression “high-water mark” means the “level of high water”.

(2) On the new constitution date the enactments mentioned in the first and second columns of Schedule 3 are repealed to the extent specified in the third column of that Schedule.

Signed by authority of the Marine Management Organisation

[Name]

Chief Executive Officer

Date

An authorised employee of the Marine Management Organisation

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made on the application of the North Sunderland Harbour Commissioners (the “Commissioners”), modernises the constitution of the Commissioners and modernises and consolidates the statutory harbour powers applying in relation to North Sunderland Harbour and provides for the following matters:

(1) Incorporating provisions from the Commissioners Clauses Act 1847 and the Harbours, Docks, Piers Clauses Act 1847 (article 3).

(2) Reconstituting the Commissioners as a body of nine members with experience in relevant matters (articles 4 to 11 and Schedule 2). The harbour master will hold office as of right (article 4) and the appointed Commissioners will retire in rotation (article 5). The Commissioners will be permitted to fill casual vacancies (article 6) and appoint additional Commissioners on a short-term basis (article 8). The Commissioners will be permitted to insure themselves against personal liability (article 10) and Schedule 2 sets out various provisions relating to the proceedings of the Commissioners (article 11).

(3) Clarifying the limits of the harbour (article 12) including plans of the harbour limits. The Order defines the limits of North Sunderland Harbour by way of World Geodetic System (“WGS84”) coordinates and any other harbour premises (defined in article 2) but also requires the Commissioners to maintain an illustrative plan showing the harbour limits and harbour premises, which must be updated within 30 days of any changes (article 12) and may be inspected at www.nsh.org.uk and, during working hours, at the principal office of the Commissioners at 1 Harbour Road, Seahouses, NE68 7RN.

(4) Conferring on the Commissioners appropriate general powers and functions for the management of the harbour (article 13).

(5) Conferring on the Commissioners the power to dredge the harbour (article 14).

(6) Conferring on the Commissioners the power to provide boating facilities in the harbour (article 15).

(7) Conferring on the Commissioners the power to provide moorings in the harbour (article 16) and providing that any person who obstructs or interferes with the Commissioners’ moorings commits an offence punishable by a fine not exceeding level 4 on the standard scale (article 17).

(8) Conferring on the Commissioners the power to remove obstructions in the harbour (article 18).

(9) Conferring on the Commissioners the power to remove goods from the harbour (article 19).

(10) Conferring on the Commissioners the power to give directions as the loading or unloading of certain goods in the harbour (article 20).

(11) Conferring on the Commissioners the power to appropriate parts of the harbour for the exclusive or preferential use of particular trades, activities or vessels etc. (article 21).

(12) Conferring on the Commissioners the power to provide and maintain life-saving appliances (article 22).

(13) Conferring on the Commissioners and the harbour master (defined in article 2) powers of general and special direction for the regulation and management of the harbour (articles 23 to 29). General directions may be given by the Commissioners for: promoting or securing conditions conducive to the ease, convenience or safety of navigation; the safety of persons; the protection of property, flora or fauna; and the ease, convenience or safety of harbour operations ashore (article 23). Special directions may be given by the harbour master for various purposes related to the management of the harbour and the regulation of vessels using the harbour (article 26). A public register of all general directions in force must be published on the Commissioners’ website and may be inspected during working hours at the harbour office (article 23).

(14) Creating 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 28). A defence of due diligence is available to a person charged under article 28 (article 28(2)).

(15) Modernising the Commissioners' power to make byelaws in respect of the harbour (article 30) and the procedures for adopting (article 31) and revoking (article 32) such byelaws.

(16) Creating an offence of failing to comply with a byelaw, the penalty for which is a fine on summary conviction not exceeding level 4 on the standard scale (article 30). A defence of due diligence is available to a person charged under article 30 (article 30(6)).

(17) Making it an offence for a person to navigate a vessel in the harbour without due care and attention or in a manner that might injure or endanger vessels, people or property (article 33). The offence is punishable by a fine not exceeding level 4 on the standard scale.

(18) Making it an offence for a person to allow, through their neglect or default, a vessel to be adrift in the harbour (article 34). The offence is punishable by a fine not exceeding level 4 on the standard scale.

(19) Conferring on the Commissioners the power to remove, sell, destroy or otherwise dispose of vessels which have been abandoned in the harbour and to recover their costs in doing so (article 35).

(20) Conferring on the Commissioners' officers the power to license the operators of tugs in the harbour (article 36) and making it an offence to operate an unlicensed tug, which is punishable by a fine not exceeding level 4 on the standard scale.

(21) Conferring on the Commissioners the power to board vessels for specified purposes (article 37).

(22) Making it an offence for a person to obstruct or threaten the Commissioners' officers in the performance of their functions and, without reasonable excuse, to fail to comply with such an officer's instructions or to give such an officer any information requested (article 38). This offence is punishable by a fine not exceeding level 4 on the standard scale.

(23) Requiring the master of a vessel that it carrying dangerous goods to give notice of its intended entry to the harbour and providing that a failure to do so is an offence punishable by a fine not exceeding level 4 on the standard scale (article 39). A defence of due diligence is available to a person charged under article 39 (article 39(2)).

(24) Conferring on the Commissioners the power to remove vehicles from the harbour (article 40), to immobilise vehicles that are illegally parked (article 41) and to provide and charge for parking facilities within the harbour (article 42). A person who, without being authorised to do so, removes or attempts to remove an immobilisation device fixed to a vehicle is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(25) Modernising the Commissioners' powers to levy charges other than ship, harbour and goods dues (article 43) and providing how such charges may be recovered by the Commissioners (articles 44 to 48).

(26) Requiring the owner or master of a vessel, if requested to do so by the harbour master, to provide details of the number of passengers embarking on or disembarking from the vessel and the weight, quantity, volume and composition of cargo being loaded onto or unloaded from the vessel in the harbour and providing that a failure to do so is an offence punishable by a fine not exceeding level 4 on the standard scale (article 49).

(27) Conferring on the Commissioners the power to control works and dredging in the harbour and to issue licences for the carrying out of such works and dredging (articles 52 to 56) and making it an offence punishable by a fine not exceeding level 4 on the standard scale for a person to carry out such works and dredging without or in breach of the terms of a licence (article 52).

(28) Conferring on the Commissioners the power to grant tenancies and to dispose of land forming part of the harbour premises (defined in article 2) and to engage in commercial activities (articles 63 and 64).

(29) Conferring on the Commissioners the power to borrow money and to grant security over the Commissioners' assets in the harbour (article 65).

(30) Providing savings for the Crown (article 67) and Trinity House (article 68).

To facilitate the above the Order amends and repeals certain provisions in the Orders of 1931 and 1993, as set out in article 70 and Schedule 3.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or 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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SCHEDULE 1
FORM OF DECLARATION BY COMMISSIONERS

I, [FULL NAME], do solemnly declare that:

- (1) I will faithfully and impartially, according to the best of my skill and judgement, execute all the powers and authorities vested in me as a member of the North Sunderland Harbour Commissioners by virtue of the North Sunderland Harbour Revision Order 20[];
- (2) I have read and understood the provisions of sub-paragraphs (6), (7) and (8) of paragraph 7 of Schedule 2 to the North Sunderland Harbour Revision Order 20[] and that I will comply with the requirements of that paragraph and, in particular, that:
 - (a) I have disclosed to the chair of the Commissioners details of every such financial or other interest; and
 - (b) I will in future notify the chair of any alteration in those interests, or any new financial or other interest which I may acquire.

Date this day of

.....
Signed

.....
Witnessed

SCHEDULE 2

PROVISIONS APPLYING TO COMMISSIONERS

Meetings of Commissioners

1.—(1) The first meeting of the Commissioners on or after the new constitution date is to be convened by the harbour master (or, in their absence, the chair) as soon as reasonably possible on or after that date and the harbour master (or the chair, as the case may be) is to give notice of that meeting to each of the Commissioners.

(2) The Commissioners are to meet at least [six] times in each year.

Chair and vice-chair of Commissioners

2.—(1) The chair is to be appointed by the Commissioners.

(2) The first person taking office as chair after the new constitution date is, unless that person resigns as chair or ceases to be a Commissioner, to continue in office as chair until that person's initial term of office as a Commissioner has expired.

(3) Subject to sub-paragraph (7), every person subsequently appointed as chair under sub-paragraph (1) is, unless that person resigns as chair or ceases to be a Commissioner, to hold office for a period of three years.

(4) There must be a vice-chair of the Commissioners who is to be appointed by the Commissioners from among the appointed Commissioners.

(5) The first person taking office as vice-chair after the new constitution date must be appointed as soon as practicable after the new constitution date and is, unless that person resigns as vice-chair or ceases to be a Commissioner, to continue in office as vice-chair until their term of office as a Commissioners has expired.

(6) Subject to sub-paragraph (7), every person subsequently appointed as vice-chair under sub-paragraph (4) is, unless that person resigns as vice-chair or ceases to be a Commissioner, to hold office for a period of 3 years.

(7) If the appointed Commissioners are satisfied that the chair or vice-chair should cease to hold office as such, they may terminate that person's office as such and appoint another Commissioner to be chair or vice-chair during the remainder of the term for which the former chair or vice-chair was appointed.

(8) On a casual vacancy occurring in the office of chair or vice-chair of the Commissioners, the vacancy must be filled by the Commissioners at a meeting held as soon as practicable after the vacancy occurs.

(9) A Commissioner appointed under sub-paragraph (8) to fill a casual vacancy in the office of chair or vice-chair is, unless they resign that office or cease to be a Commissioner, to hold that office during the remainder of the term for which the chair or vice-chair being replaced was appointed.

(10) In the absence of the chair the person for the time being holding office as vice- chair is to have and may exercise all the powers of the chair.

(11) If at a meeting of the Commissioners neither the chair nor the vice-chair is present the Commissioners present must choose one of their number to be chair of the meeting.

Vacation of office by Commissioners

3. A Commissioner (other than the harbour master) may resign that office at any time by notice in writing given to the chair or if that Commissioner is the chair, the vice-chair.

Reappointment of Commissioners

4.—(1) Subject to the provisions of this Schedule, a vacating Commissioner is eligible for reappointment as a Commissioner unless disqualified from office under article [9] of this Order.

(2) Subject to sub-paragraph (3), a vacating Commissioner who has held office for two consecutive terms is not eligible for reappointment as a Commissioner.

(3) A chair of the Commissioners who, immediately before the date in question, has held office for three consecutive terms is not eligible for reappointment as a Commissioner.

(4) For the purposes of this paragraph, “term” does not include—

- (a) a term referred to in article [5](2)(a) or (b) of this Order; or
- (b) the remainder of a term during which the Commissioner was appointed to fill a casual vacancy under article [6] of this Order.

Reappointment of chair

5.—(1) A chair of the Commissioners who has served as the chair for two consecutive terms immediately beforehand is not eligible for reappointment as the chair.

(2) For the purposes of this paragraph, “term” does not include—

- (a) a term served by the Commissioner as the chair under paragraph 2(2);
- (b) the remainder of a term during which the chair was appointed to fill a casual vacancy in the office of the chair under paragraph 2; or
- (c) any term served by the chair as a Commissioner prior to the new constitution date.

Committees

6. The Commissioners may, subject to such conditions as they think fit, delegate to a committee of the Commissioners any of their functions (other than the functions set out in paragraph 9B(a) to (f) of Schedule 2 to the Harbours Act 1964(a)).

Proceedings of Commissioners and Committees

7.—(1) Every question at a meeting of the Commissioners or a committee of the Commissioners must be decided by a majority vote of the Commissioners present and voting.

(2) If at any meeting of the Commissioners there is an equality of votes on a question, the chair of the meeting has a second or casting vote.

(3) The quorum required for a meeting of the Commissioners is four.

(4) The Commissioners must cause minutes to be made—

- (a) of the names of Commissioners present at a meeting of the Commissioners or of a committee of the Commissioners; and
- (b) of all proceedings or resolutions at such meeting;

(a) Paragraph 9B was inserted by the Transport and Works Act 1992(c.42) section 63 and Schedule 3, paragraph 9(5).

and such minutes, if signed by a person purporting to be chair of the meeting to which the minutes relate or of a subsequent meeting at which the minutes were approved as a correct record, is to be received in evidence without further proof.

(5) Until the contrary is proved, a meeting for which minutes have been so made or signed is to be deemed to have been duly convened and held and, if it was a meeting of a committee, that committee is to be deemed to have had power to deal with the subject of the minutes.

(6) A Commissioner who has any interest, direct or indirect—

- (a) in any contract or proposed contract to which the Commissioners are or would be a party, or is a director of a company or body with which the contract or proposed contract is made or proposed to be made,
- (b) in any other matter with which the Commissioners are concerned,

must declare that interest.

(7) A Commissioner, who is present at a meeting of the Commissioners or of any committee of the Commissioners at which a contract or other matter in which that Commissioner has an interest is to be considered, must—

- (a) as soon as is practicable after the commencement of that meeting, disclose that interest;
- (b) not vote on any question with respect to that contract or matter; and
- (c) withdraw from the meeting—
 - (i) at any time if so required by a resolution of the Commissioners present; and
 - (ii) while a decision on that contract or matter is being made.

(8) This paragraph does not apply to any interest—

- (a) which a Commissioner has in respect of the payment to the Commissioners of harbour dues;
- (b) which arises in respect of the provision of harbour services or facilities affecting the trading community in general;
- (c) which a Commissioner has as an employer of a public utility undertaking or as a shareholder, not being a director of a company, with a holding which does not exceed five per cent of the issued share capital of the company; or
- (d) which the Commissioners present at the meeting by resolution declare to be too remote.

Validity of acts of Commissioners

8. The Commissioners may act notwithstanding a vacancy among the Commissioners and no act of the Commissioners or of any committee of the Commissioners is to be deemed to be invalid by reason of any vacancy in their number or defect or irregularity in the appointment of any person as a Commissioner or as chair or vice-chair of the Commissioners or committee.

Authentication of seal

9.—(1) The application of the seal of the Commissioners must be authenticated by the signature of the chair or some other Commissioner authorised by the Commissioners to authenticate the application of the seal, and of the harbour master or some person authorised by the Commissioners to act in the place of the harbour master in that behalf.

(2) The Commissioners may authorise a person to act instead of the harbour master under this paragraph whether or not the harbour master is absent or incapable of acting.

Remuneration of Commissioners

10. The Commissioners may pay to the chair and other Commissioners such salary, allowances and expenses as the Commissioners from time to time determine.

General

11. The Commissioners may appoint upon such terms and conditions as they see fit such officers and servants as they may determine.

12. Subject to the provisions of this Schedule, the procedure of the Commissioners is to be regulated in such manner as the Commissioners determine.

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SCHEDULE 3

REPEALS

<i>Chapter or number</i>	<i>Short title</i>	<i>Extent of revocation</i>
S.R. & O. 1931/928	North Sunderland Harbour Order 1931	Articles 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 38, 40, 41, 42, 43, 49, 56, 57, 58, 59, 60 and the Schedule
S.I. 1993/1451	Harbour Authorities (Variation of Constitution) Order 1993	Article 4

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STATUTORY INSTRUMENTS

201[] No. []

HARBOURS, DOCKS, PIERS AND FERRIES

The [] Harbour Revision Order 20[]

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