

2020 No.

HARBOURS, DOCKS, PIERS AND FERRIES

The Port of Southampton Harbour Revision Order 20[X]

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

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Associated British Ports has applied for a harbour revision order under section 14 of the Harbours Act 1964(a) (“the Act”);

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

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

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Port of Southampton Harbour Revision Order 20[X] and shall come into force on [].

Interpretation

2. In this Order—

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(f) as incorporated by section 17 of the Southampton Harbour Act 1863 in relation to its application to the Port;

“the 1887 Act” means the Southampton Harbour Act 1887 (g)

“A.B. Ports” means Associated British Ports;

“direction” means a general or special direction;

“dock estate” has the meaning given to it in section 5A (Definition of the dock estate) of the 1887 Act;

“general direction” means a direction made under this Order or under section 52 (Powers of Harbour, Dock or Pier Master) of the 1847 Act which is of general application;

“the harbour master” means the harbour master appointed by A.B. Ports at the Port and includes any deputies or assistants of the harbour master;

“personal watercraft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

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

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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 I); by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraphs 8 and 9; by S.I. 2009/1941, article 2 and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c. 48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c. 56), sections 18 and 40 and Schedule 6, paragraph 5(3) and Schedule 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) See S.I. 2010/674.
 - (c) Section 42A was inserted, in relation to England and Wales, by section 315 of, and paragraphs 1 and 3(1) of Schedule 21 to the Marine and Coastal Access Act 2009 (c. 23).
 - (d) For the definition of “the Minister” see section 57(1) of the Harbours Act 1964 (c. 40).
 - (e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c. 23).
 - (f) 1847 c. 27.
 - (g) 1887 c. lxxxi (50 and 51 Vict).

“the Port” means the Port of Southampton as defined in section 5 of 1887 Act as that section has effect in accordance with section 16 of the British Transport Docks Act 1972(a), and excluding the navigation as defined in that section;

“special direction” means a direction made under this Order or section 52 of the 1847 Act which applies to a particular vessel or person;

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

Amendment of the 1887 Act to clarify the definition of Port

3.—(1) The 1887 Act is amended as follows—

- (a) in section 5 (Defining the port) for the words “and also such docks basins quays and other works as have by any Act of Parliament been declared to be within or to form part of the port of Southampton” substitute “and the dock estate, as defined in section 5A”;
- (b) after section 5 (Defining the port) insert—

“5A. Definition of the dock estate

(1) In section 5, dock estate means land adjacent to the wet harbour area for the time being vested in, or occupied or administered by A.B. Ports as part of its harbour undertaking at Southampton and occupied wholly or mainly for the purposes of activities there carried on, which may include docks, quays, piers, wharves, berths, locks, breakwaters, landing places, yards, roads, car parks, sheds, other buildings and all other works and conveniences, land and premises.

(2) In the definition of dock estate, wet harbour area means those parts of the area described in section 5 of this Act which are covered by water at the level of low water.”

Illustrative plan

4.—(1) A.B. Ports must keep, and make available for inspection at its main office and on its website from the day on which this Order comes into force, an illustrative plan.

(2) A.B. Ports must update the illustrative plan to reflect any alterations to the extent of the dock estate within the period of 30 days beginning with the day on which the alterations are made.

(3) In this article—

“illustrative plan” means a plan showing, for illustrative purposes only, the Port.

PART 2

GENERAL DIRECTIONS AND SPECIAL DIRECTIONS

Additional power to make directions

5.—(1) In addition to the directions which the harbour master may make under section 52 of the 1847 Act the harbour master may make directions for any of the following purposes—

- (a) to require the provision of information (including but not limited to risk assessments) from any person using or proposing to use the Port;
- (b) regulating the loading or discharging of cargo, fuel, water or ships’ stores or the embarking or landing of persons;

(a) 1972 c. xxxvii.

- (c) otherwise for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons or the amelioration of environmental harm in the port; or, in the case of a special direction,
 - (d) requiring persons to comply with a requirement made under a general direction or byelaw or any other enactment of local application relating to the Port.
- (2) A direction made under this article or section 52 of the 1847 Act may apply to—
- (a) a particular vessel or person;
 - (b) all vessels or a class or type of vessels;
 - (c) all vehicles or to a class of vehicles;
 - (d) all persons designated in the direction;
 - (e) the whole of the harbour or to a part; or
 - (f) at all times or at certain times or at certain states of the tide;

and where the extent of a direction is limited, the direction must specify the extent of its application.

- (3) The harbour master may revoke or amend a general or special direction.
- (4) A.B. Ports must keep and make available for inspection at its main office and on its website (a) a public register of all in force general directions.

Procedure for giving, amending or revoking general directions

6.—(1) Subject to paragraph (7), if A.B. Ports proposes to give, amend or revoke a general direction, it must—

- (a) give notice in writing of the proposal and a plan of the area over which the proposal applies to the “designated consultees” them being;
 - (aa) the Chamber of Shipping;
 - (bb) the Royal Yachting Association; and
 - (cc) such other persons or organisations as they consider appropriate for the purposes of the application of this provision;
- (b) place a notice of the proposal on A.B. Ports website and in prominent locations at A.B. Port’s main office on the same date as the notice given in accordance with sub-paragraph (a) and keep that notice on display for a minimum of 6 weeks;
- (c) consult with the designated consultees upon the proposal, and allow a period of not less than 6 weeks beginning with the date of the notices given in accordance with sub-paragraphs (a) and (b) for written representations to be made by the designated consultees and any other persons to A.B. Ports regarding the proposal;
- (d) have regard to all representations made during consultation;
- (e) give notice in writing to the designated consultees, and to those other persons that have provided a consultation response, following consultation, as to whether A.B. Ports proposes to proceed with the proposal and, if so, specifying whether it is making any modifications to the proposal and its reasons for so doing; and
- (f) if A.B. Ports proposes to proceed with the proposal and a designated consultee has made representations against the proposal, invite that designated consultee to confirm in writing whether they maintain their objection to the proposal within 28 days beginning with the date of the notice given in accordance with sub-paragraph (e), or such longer period as A.B. Ports may specify.

(a) Ocean Gate, Atlantic Way, Southampton, Hampshire, SO14 3QN. The A.B. Ports website can be found at: <http://www.southamptonvts.co.uk/>

(2) Where A.B. Ports has complied with paragraph (1), it may proceed to give, amend or revoke a general direction if—

- (a) none of the designated consultees have made representations against the proposal,
- (b) none of the designated consultees which made representations against the proposal, have confirmed in writing that they are maintaining their objection to the proposal in accordance with paragraph (1)(f), or
- (c) where a designated consultee has maintained an objection in accordance with paragraph (1)(f), the requirements of paragraph (3) have been complied with.

(3) Where a designated consultee has confirmed in writing to A.B. Ports that they maintain their objection to a proposal—

- (a) the issue must be referred to an independent person (“the adjudicator”) appointed—
 - (i) by agreement between A.B. Ports and each designated consultee maintaining an objection in accordance with paragraph (1)(f) (“the parties”); or
 - (ii) failing agreement, by the President of the London Maritime Arbitrators Association on the application of either of the parties;
- (b) so far as is reasonably practicable within 12 weeks beginning with the date of the referral, the adjudicator must—
 - (i) provide a reasonable opportunity for the parties to make representations to or be heard by the adjudicator at a hearing, and
 - (ii) make a written report to the parties with findings and recommendations on the issue, and
- (c) A.B. Ports must decide whether to exercise the power to give, amend or revoke the general direction having regard to the adjudicator’s report (but it is not bound to give effect to any recommendations) and, once they have decided, must give notice in writing to the designated consultees and to any other person that provided a consultation response of their decision and the reasons for that decision.

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

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

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

(7) Paragraphs (1) to (6) do not apply where in the interests of navigational safety, or safety of persons, A.B. Ports proposes to give, amend or revoke a general direction—

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

(8) Where A.B. Ports proceeds to give, amend or revoke a general direction in accordance with paragraph (7), it must—

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

- (b) if the direction or amendment is intended to continue in force for more than 12 weeks, apply the procedure under paragraphs (1)(c) to (1)(f) and (2) to (6) to the direction or amendment with the following modifications—
 - (i) a reference to the ‘proposal’ in those paragraphs is to be read as a reference to the direction or amendment;
 - (ii) in paragraph (1)(c), for “sub-paragraph (a) and (b)” substitute “paragraph (8)(a)”; and
 - (iii) a reference to A.B. Ports ‘proceeding’ with a proposal is to be read as a reference to A.B. Ports determining that the direction or amendment should remain in force.

Publication of directions

7.—(1) Subject to paragraph (4), A.B. Ports 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 port and electronically on A.B. Port’s website for the period of 28 days from the date of publication of the notice in the newspaper.

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

(3) A.B. Ports must display notices of general directions that apply to port premises at prominent locations within the port.

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

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

Failure to comply with directions

8.—(1) A person who fails to comply with a general 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) Paragraph (1) applies to any person designated in a general or special direction and to the master of every vessel to which a general or special direction applies.

(3) In any proceedings for an offence under paragraph (1) it is 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

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

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

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

(3) Expenses incurred by A.B. Ports in the exercise of the powers conferred by paragraph (1) above are to be recoverable by it as if they were a charge of A.B. Ports in respect of the vessel.

Master's responsibility in relation to directions

10. The giving of a general or 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 the vessel, to persons on board the vessel, to the cargo or any other person or property.

PART 3

MISCELLANEOUS AND GENERAL

Modification of local legislation

11.—(1) The 1847 Act is modified in its application to the Port as follows—

(a) in section 52 (Powers of Harbour, Dock or Pier Master) “vessel” has the meaning given by article 2 of this Order.

(2) Section 17 (which incorporates the 1847 Act) of the Southampton Harbour Act 1863 is modified as follows—

(a) for “and Twenty six” substitute “, Twenty Six and Fifty three”.

(3) Section 13 of the Southampton Harbour Act 1939 (Orders of harbour master need not be in writing) is repealed.

Identity of Master

12.—(1) The owner of a vessel which has been at any time within the Port must, on written notice to them by the harbour master, give to the harbour master in writing all information in their power as to the person who at that time was the master of the vessel. Any owner refusing to give such information or by their own negligence or default being unable to give the name and address of such person 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 relating to the vessel or its master the written information given pursuant to paragraph (1) is to be admissible as evidence for the purpose of determining the identity of the master of the vessel at a particular time.

Notices

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

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

(3) Where a person on whom a notice or other document is to be given has agreed in writing, including in electronic form, that notices may be given by email, or other electronic means, A.B. Ports may provide notices by that means until such time as the person informs it in writing that they are no longer willing to receive notices or documents by email or by such other electronic means.

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

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and

(a) 1978 c. 30.

(b) in any other case, their last known address at the time of service.

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

(a) in the case of a notice or document relating to a vessel , it may be given by exhibiting it in a conspicuous position on or near the vessel (unless it would not be reasonably practicable to exhibit the notice or document in this manner or if the notice or document would not be likely to be seen if it were so exhibited) or by handing it to a member of the crew, and

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

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)

The Order updates the regulatory powers of Associated British Ports at the Port of Southampton. It confers additional powers on its harbour master at the Port to make directions regulating use of the Port and makes new provisions concerning the publications and enforcement of such directions.