

### 1. Marine Powers as the Statutory Harbour Authority

#### (A) Harbour Dues

##### i. **Ship, passenger and goods dues**

Under sub-sections 26(1) and (2) of the 1964 Act, the Council as the SHA may demand, take and recover such 'ship passenger and goods dues' as it thinks fit at any harbour which it is engaged in improving, maintaining or managing, except insofar as the statutes applying to it prohibit the levying of a due or contain an express freedom from dues (discussed under Exemptions from ship, passenger and goods dues in paragraph 5.1.5 below). All other limits on the Council's discretion relating to such dues within the relevant statutes have ceased to have effect as a result of s26(1).

Under the article 24 of the 1970 Act, the Council also has powers to charge the equivalent of ship, passenger and goods dues on any dracone or floating dock, crane rig, drilling rig or other floating part (not being 'ships' as defined under the 1964 Act).

##### ii. **Deposit for charges**

Under section 33 of the 1970 Act, the Council may require a deposit or guarantee for charges.

##### iii. **Enforcement for non-payment of such dues**

The power to distrain for non-payment of ship dues in section 44 of the HDPCA 1847 and the power to distrain for non-payment of goods dues in section 45 of the HDPCA 1847 are exercisable by the Council.

Section 30 of the 1970 Act provides that if the owner of any vessel or goods or any other person who eludes or evades (or attempts to) the payment of a charge, they shall be liable to pay, in addition, a sum equal to the amount thereof.

Section 34 of the 1970 Act also confirms that the Council may recover any charges payable to them as a debt in any court of competent jurisdiction.

##### iv. **Challenging a ship, passenger or goods due**

The means of challenging a due imposed under s26(2) of the 1964 Act are set out in s31 of that Act. There is a right of written objection to the Secretary of State for Transport.

##### v. **Exemptions from ship, passengers and goods dues**

Legislative provisions that prohibit the levying of a due at all, or contain an express freedom from dues, remain effective notwithstanding section 26 of the 1964 Act. An example of such a clause is found in section 29 of the HDPCA 1847 (vessels returning from stress of weather).

##### vi. **Works Powers**

The key provisions from local legislation relating to the Council's works' powers include:

###### A. 1837 Act:

1. Section 18: provides a power for the Council to enlarge, improve, alter, deepen, widen and maintain the harbour of Brixham and perform other works. This applies only within the 'limits of the harbour' at Brixham, as defined by section 22 of that Act.

###### B. 1970 Act:

1. Section 9: provides a power for the Council to extend or alter any tidal work provided that they will not deviate beyond the limits of deviation specified in the enactment authorising the tidal work in question by more than 5 metres.

##### vii. **Dredging Powers**

The Council has express dredging powers under section 14 of the 1970 Act. Under this section, the Council may:

*'deepen, widen, dredge, scour, cut and improve the bed and foreshore of the harbour, or in or near any seaward approaches thereto, and for this purpose may blast any rock therein'.*

#### (B) Prohibit Dangerous Goods

As the statutory Harbour Authority, the Harbour Master has the power, under the Dangerous Goods in Harbour Areas Regulations 2016, to prohibit the entry of dangerous goods or vessels carrying them if safety is at risk.

## 2. Special Directions

The Harbour Authority has the power to make special directions as follows:

HDPCA 1847: section 52: Powers of dock, harbour, pier master (or their assistants) to give directions for all or any of the following purposes:

- (A) For regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour, dock, or pier, and within the prescribed limits, if any, and its position, mooring or unmooring, placing and removing, whilst therein;
- (B) For regulating the position in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within or on the harbour, dock, or pier;
- (C) For regulating the manner in which any vessel entering the harbour or dock or coming to the pier shall be dismantled, as well for the safety of such vessel as for preventing injury to other vessels, and to the harbour, dock, or pier, and the moorings thereof;
- (D) For removing unserviceable vessels and other obstructions from the harbour, dock, or pier, and keeping the same clear;
- (E) For regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock, or pier shall have during the delivery of her cargo, or after having discharged the same.

*'shall not be construed to require the harbour master in emergency to give particular directions in the case of every vessel in respect of which it is desired to exercise any of the powers of that section, but in pursuance of that section, for all or an of the purposes thereof, the harbour master shall be entitled in emergency to give general directions applicable to all vessels or to particular classes of vessels'.*

Additional powers are also given under section 3(2)(c)(ii) of the 1970 Act which empowers the harbour master to give directions as to the areas, routes or channels in the harbour which vessels, or particular classes of vessels are to use or refrain from using for movement or moorings.

The issuing of a special direction can be given in any reasonable manner that is considered appropriate (Section 3(2)(d) – 1970 act).

It should be borne in mind that the power under s52 should not be exercised to give 'general directions'.

A person who fails to comply is liable for a fine of up to level 2 on the standard scale with respect to special directions given under the HDPCA 1847.

All Special Directions are:

- Recorded
- Proportionate
- Risk-based

Records are retained for audit purposes.