



**Meeting: Harbour Committee**

**Date: 21<sup>st</sup> December 2015**


**Wards Affected: All wards in Torbay**

**Report Title: Review of Tor Bay Harbour Legislation**

**Executive Lead Contact Details: Non-Executive Function**

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**1. Purpose**

- 1.1 In order to comply with the Port Marine Safety Code, the Harbour Committee, as the duty holder, on behalf of the harbour authority must review and be aware of their existing powers based on local and national legislation.

**2. Proposed Decision**

- 2.1 **That, the contents of the report entitled 'Overview of Key Statutory Harbour Powers' for Tor Bay Harbour Authority, contained in Appendix 1, is noted.**
- 2.2 **That, the Executive Head of Business Services and Tor Bay Harbour Master, is authorised to apply to the Secretary of State for Transport, for Torbay Council (Tor Bay Harbour Authority) to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.**
- 2.3 **That, the harbour authority has had regard to the content of and agrees to comply with the Code of Conduct on Harbour Directions, in particular :-**
- a) **To maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the Code of Conduct when required; and**
  - b) **To have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.**

**3. Action Needed**

- 3.1 The Committee is asked to note that a review of Tor Bay Harbour's legislation, including byelaws and directions, has been concluded and that it remains mainly fit for purpose, with no need to dispense with redundant or obsolete legal functions.

3.2 As a result of the review of Tor Bay Harbour's legislation, it is recommended that the authority should seek additional powers that are deemed both necessary and desirable. Subject to approval of the recommendation set out in 2.2 above, the Executive Head of Business Services and Tor Bay Harbour Master will need to apply for such powers.

#### 4. **Summary**

4.1 In Order to comply with the Port Marine Safety Code, the Port Marine Safety Code Guide to Good Practice on Port Marine Operations (March 2015) ('**Guide to Good Practice**') states at paragraph 1.5 that :-

*"All legislation, including byelaws and directions, should be reviewed on a regular basis, preferably annually, to ensure that it remains fit for purpose in changing circumstances. The Code provides that the requirements for marine safety will be determined by risk assessment. If the legal responsibilities cannot be discharged effectively using available powers and other measures, and that authority does not have the powers to rectify the situation, then it should seek the necessary additional powers. In addition, it is good practice to dispense with redundant or obsolete legal functions."*

4.2 Having carried out a review of statutory harbour powers, it has been confirmed that the Authority currently only has very limited powers of general direction. As the Authority only has very limited powers of general direction, it should consider the guidance given in paragraphs 1.11 and 1.12 of the Guide to Good Practice with regard to general and harbour directions. This is particularly pertinent because the Department for Transport has currently opened a second round of applications for harbour authorities wishing to be designated with powers of harbour direction. The closing date for expressions of interest is 31 January 2016.

4.3 The decision as to whether to apply to be designated with powers of harbour direction should be taken on a risk based approach. The first step of which involves ascertaining whether there are any risks within the harbour (or any foreseeable future risks), which the Authority considers they do not have adequate current enforcement powers to deal with. In particular, given that powers of harbour direction relate to directing the movement, mooring, equipment and manning of ships, this area should be considered closely.

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### **Supporting Information**

#### 5. **Position**

5.1 All legislation, including byelaws and directions, should be reviewed on a regular basis, preferably annually, to ensure that it remains fit for purpose in changing circumstances. The Code provides that the requirements for marine safety will be determined by risk assessment. If the legal responsibilities cannot be discharged effectively using available powers and other measures, and that authority does not have the powers to rectify the situation, then it should seek the necessary additional powers. In addition, it is good practice to dispense with redundant or obsolete legal functions.

- 5.2 It is essential that all harbour authorities are aware of their local duties and powers, and are well versed in all local legislation. Harbour authority boards and managers must understand clearly the meaning of all the relevant legislation which affects their harbour in order to avoid failing to discharge their duties or exceeding their powers.
- 5.3 Marine Enforcement Limited formally undertook a review of existing legislation in October 2002 and this was followed by a further internal review in 2010. The 2010 review reflected the extent to which appropriate systems were already in place, but it was also shaped by the level of ongoing stakeholder consultation, industry networking and the annual publication of Tor Bay Harbour's various safety policies. It is a requirement of the Code that each authority's policies and procedures should demonstrate that they are based upon a full assessment of the hazards, which have to be managed to ensure the safety of the harbour and its users.
- 5.4 In November 2015, Ashfords LLP were instructed to review the Authority's existing statutory powers and duties, including those related to the making of byelaws, directions or regulations (rather than the byelaws or directions themselves). The Ashfords report an 'Overview of Key Statutory Harbour Powers' is attached as Appendix 1.
- 5.5 Since the reviews of legislation in 2002 and 2010, the Harbours Act 1964 has been amended by the Marine Navigation Act 2013, and a new 'power of harbour direction' has been introduced. As part of its compliance with the Port Marine Safety Code, the Authority needs to consider whether to apply for powers of harbour direction.
- 5.6 Having carried out a review of statutory harbour powers, it has been confirmed that the Authority currently only has very limited powers of general direction. As the Authority only has very limited powers of general direction, it should consider the guidance given in paragraphs 1.11 and 1.12 of the Guide to Good Practice with regard to general and harbour directions.
- 5.7 In relation to general directions and harbour directions, the Guide to Good Practice (paragraphs 1.10 - 1.12) states :-

***"General Directions and Harbour Directions***

*1.10. Some harbour authorities have powers, through their local enabling legislation, to give 'general directions' to enable a harbour authority, after due consultation, to lay down general rules for navigation (subject to certain constraints) and regulate the berthing and movements of ships. These carry the force of law, but are often easier to achieve and amend than using byelaws, and thus act as a useful mechanism for managing navigation and furthering safety.*

*1.11. Harbour authorities would be well advised to secure these powers, by using a harbour revision order, to support the effective management of vessels in their harbour waters.*

*1.12. Alternatively harbour authorities may apply for designation with the power to give 'harbour directions'. Designation is a simpler process than obtaining a harbour revision order and the power of harbour directions is similar in relation directing the movement, mooring, equipment and manning of ships. A non- statutory Code of*

*Conduct on the use of this power has been agreed between representatives of the ports, commercial shipping and recreational sailing sectors."*

5.8 As the Authority only has very limited powers of general direction, it should consider the guidance given in paragraphs 1.11 and 1.12 of the Guide to Good Practice with regard to general and harbour directions.

## 6. **Possibilities and Options**

6.1 The Harbour Authority could elect not to apply for Harbour Direction powers but this would not be in line with good practice.

## 7. **Preferred Solution/Option**

7.1 For the Harbour Committee to note the contents of the review of existing legislation and to authorise the application for the additional powers of harbour directions.

## 8. **Consultation**

8.1 This issue has been discussed with the two Harbour Liaison Forums. If the authority is successful in obtaining these additional powers it will need to maintain a Port User Group (Harbour Liaison Forums) and to apply a dispute resolution procedure such as is set out in the Code of Conduct when required. Furthermore, it will have to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

## 9. **Risks**

9.1 If the authority does not seek these powers of harbour directions, it will not have at its disposal the full range of legislative options to safely manage the harbour. Such a decision could attract criticism from the Department for Transport, the Maritime & Coastguard Agency or the Marine Accident Investigation Branch.

9.2 A minor reputational risk exists if the authority does nothing.

## **Appendices**

Appendix 1 Tor Bay Harbour Authority – Overview of Key Statutory Harbour Powers (Ashfords LLP, 25<sup>th</sup> November 2015)

## **Additional Information**

The Port Marine Safety Code – March 2015 (DfT)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415007/Port\\_marine\\_Safety\\_Code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415007/Port_marine_Safety_Code.pdf)

A Guide to Good Practice on Port Marine Operations – March 2015 (DfT)

<https://www.gov.uk/government/publications/a-guide-to-good-practice-on-port-marine-operations>

National Directions Panel – Supplementary Guidance: Code of Conduct on Harbour Directions