

Annex D-5: Application of St Mawes Pier and Harbour Company

See separate document uploaded on the Department's website (www.gov.uk/dft) with this consultation document.



The Saint Mawes Pier and Harbour Company.
The Quay, St Mawes, Truro, TR2 5DG.

26 March 2016

POWERS OF HARBOUR DIRECTION: APPLICATION FOR DESIGNATION

ST MAWES PIER & HARBOUR COMPANY

St Mawes Pier & Harbour Company is the Statutory Harbour Authority for St Mawes Harbour, Cornwall. In order to assist them in managing and running a safe and efficient harbour, and in particular discharging their responsibilities relating to the safety of vessels and people within the harbour (including navigational safety) and the protection of the port environment, the St Mawes Pier & Harbour Company ('the Harbour Authority') wishes to apply to be designated as a designated harbour authority with the power to make harbour directions.

RATIONALE

As required by the Port Marine Safety Code ('PMSC'), the Harbour Authority has recently carried out a review of the their existing statutory powers (included local legislation and bye-laws) with the assistance of their legal advisors. This review has confirmed the Harbour Authority's pre-existing understanding, which is that the Harbour Authority does not have powers of general direction. The Harbour Authority does have the power to issue bye-laws and the Harbour Master may issue special directions under section 52 Harbour Docks and Piers Clauses Act 1847. The Harbour Authority is not designated as a Competent Harbour Authority in respect of Pilotage.

However the lack of powers for the Harbour Authority or its Harbour Master to issue general directions in relation to all ships in the harbour area, either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship, is considered by the Harbour Authority to hinder them in the fulfilment of their statutory duties. The PMSC advises that the paragraph 3.4 that "*Harbour Authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not already have them.*"

In order to obtain powers of general direction the Harbour Authority would need to make a Harbour Revision Order application, which is a costly a time consuming process. Designation with powers of harbour direction would be an effective substitute for powers of general direction. Therefore the Harbour Authority seeks to designated as a designated harbour authority with powers of harbour direction in response to the review of its statutory powers, as recommended by the PMSC.

In addition the leisure vessel and ferry activity at the port has doubled in under ten years. Therefore it would be beneficial for existing safety controls to be reinforced to ensure safe navigation of all vessels using the harbour. The use of Harbour Directions with respect of ships (as defined in the Harbours Act 1964) would greatly assist in this area.

DETAILS OF ANY PROPOSAL AMENDING OR REPEALING ANY STATUTORY PROVISION OF LOCAL APPLICATION

The bye-laws in place at St Mawes Harbour have been reviewed as part of the Statutory Harbour Power Review carried out by the Harbour Authority with the assistance of its legal advisors. As recommended by paragraph 4.4 of the Code of Conduct, it is the Harbour Authority's intention to update these bye-laws (including revocation/amendment of any existing bye-laws which might otherwise conflict with Harbour Directions) at the same time as making harbour directions (provided the Harbour Authority's application to become designated with powers of harbour direction is successful). Compatibility with any harbour directions the Harbour Authority may wish to introduce can then be ensured.

Therefore the Harbour Authority is not requesting that any statutory provision of local application be amended or repealed in the designation order.

CONSULTATION

The Harbour Authority carried out a consultation between 11 February and 10 March 2016 which sought the views of harbour users and other interested parties on the Harbour Authority's intention to apply to be designated with powers of Harbour Direction.

The consultation document at Annex 'B' and the Department for Transport Harbour Direction guidance document were placed on the Harbour Authority's website during the consultation period. Copies were also available at the Harbour Office. As the consultation document makes clear, views were sought on both the suitability of the Harbour Authority to be designated with the power to make Harbour Directions and gave an indication of what Harbour Directions can cover.

In addition:

- A Public Notice appeared in the West Britton on the 11 February 2016 for one edition (see Annex 'C').
- An email was sent by the Harbour Authority to the members of the St Mawes Harbour User Group on 26 January 2016 informing of the consultation and providing them with the consultation document (Annex B) and the Department for Transport's Harbour Direction guidance document.
 - full list of member bodies/representative organisations represented in the St Mawes' Harbour User Group is included in Annex 'D'.

- The British Ports Association, the NFFO, UK Chamber of Shipping and the British Tug Owners Association on 9 February 2016 and the RYA on 9 February and 29 February 2016 were informed of the Harbour Authority's intention to apply to be designated with powers of Harbour Direction and provided with its consultation document (Annexe 'B').

CONSULTATION RESPONSES

Below is a summary of the consultation responses received:

1. The UK Chamber of Shipping and the British Tug Owners Association responded on 10 February 2016 to confirm that they had no comment to make.
2. The RYA responded on 9 February 2016 to confirm that it had no objection in principle and to request further information regarding the composition of the Harbour Users Group. The Harbour Authority's solicitors responded on 29 February 2016 to provide the requested information. To date no further response has been received from the RYA. If a response is received, the Department for Transport will be informed.
3. No formal responses were received by the Harbour Authority from members of the public or members of its harbour user group. However, informally positive verbal responses have been received.

CODE OF CONDUCT STATEMENT

See signed Statement of Assurance as Annex 'A'.

The St Mawes Harbour User Group will be the Harbour Authority's adopted Port User Group. The Harbour Authority is in the process of formalising arrangements for the St Mawes Harbour User Group so that it functions in compliance with the requirements of the Code of Conduct



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Gary Cairns
Harbour Master
For St Mawes Pier and Harbour Company

ANNEXES

- A. Statement of Assurance.
- B. Consultation Information
- C. Public Notice
- D. Members, Bodies/Representative Groups



Annex A

The Saint Mawes Pier and Harbour Company. The Quay, St Mawes, Truro, TR2 5DG.

08 February 2016

Statement of Assurance

I confirm that the following resolutions of The Saint Mawes Pier and Harbour Company were duly passed at a meeting of the The Saint Mawes Pier and Harbour Board on November 25th 2015.

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.

The Harbour Master is authorised to apply to the Secretary of State for Transport for The St Mawes Pier and Harbour Company to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Harbour Master

W Whitton

Managing Director

Annex B: Consultation Information

Harbour Directions - Consultation

St Mawes Pier and Harbour Company, as a Statutory Harbour Authority, wish to modernise by seeking to be designated with powers of Harbour Direction. Current byelaws, whilst relevant, are inadequate for the traffic using the port.

Harbour Directions

What are they?

The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called "designated harbour authorities".

What are they used for?

Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:

- a. to regulate the use of any main navigation channel or fairway;
- b. to prescribe where and how vessels are to moor and move within the harbour;
- c. to ensure ships above a certain size have working radios to allow communication between harbour master and ship;
- d. to specify requirements for no deficiency in machinery; and,
- e. to ensure sufficient people with relevant experience crew specific types of ship.

Who will they apply to?

Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

The grant of powers depends on the Commissioners giving assurance that they will maintain:

- a) A Port User Group and to apply a dispute resolution procedure such as is set out in the code of contact 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.

The St Mawes Harbour Users Group is the adopted Port User Group and the St Mawes Pier and Harbour Company resolved to offer the required assurance at its board meeting on TBA.

This consultation seeks views, comments and/or observations on the matter, which should be forwarded to Gary Cairns by 10th March 2016.

This consultation is only relevant to the taking of powers. The actual Directions will be the subject of a further consultation once the Powers are granted.

Annex C: Public Notice

Public Notice which appeared in the West Britton on the 11 February 2016

St Mawes Pier and Harbour Company

Views are invited from Harbour Users and other interested parties, by March 10th 2016, on the taking up of Powers of Harbour Direction by St Mawes Pier and Harbour Company

Further details from St Mawes Pier and Harbour Company,
The Quay, St Mawes, Truro, TR2 5AA , 01326 270553
www.stmawesharbour.co.uk

Annex D: Members Bodies/Representative Groups

Member Bodies / Representative Groups in the Harbour User Group

1. St Mawes Sailing Club/RYA Training
2. Percuil River Mooring Assoc.
3. Classic Sailing Charter/RYA Training
4. Sea Angler/SAC Advisory Group
5. Commercial Fisherman / Mooring Holder
6. RYA Training (Fireman and Mooring Holder)
7. St Mawes Kayaks/Water Taxi
8. Roseland Paddle & Sail/RYA Training

Caroline Wall

From: Moore, Lara <l.moore@ashfords.co.uk>
Sent: 08 April 2016 08:29
To: Caroline Wall
Cc: Gus Lewis
Subject: St Mawes Pier and Harbour Company: Harbour Directions Application: Further Consultation Response from RYA

Dear Caroline,

Since submitting the harbour directions application for St Mawes Pier and Harbour Company, we have received further consultation correspondence from the RYA. The RYA has confirmed that it does wish to take up the harbour authority's invitation for an RYA representative to become a member of the Port User Group (PUG). They have also suggested who the representative should be. St Mawes Pier and Harbour Authority has responded to confirm that it is happy to invite the suggested representative to be a member of the PUG and the Harbour Master has made contact with the representative.

Therefore please could you update the harbour directions application already submitted, by annexing this email to it?

Kind regards

Lara

Lara Moore | Associate

Direct +44 1392 333861
Mobile +44 7736 295582
Fax +44 1392 336861
l.moore@ashfords.co.uk
Ashfords LLP | Ashford House Grenadier Road Exeter EX1 3LH



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Ashfords' charity of the year for 2016 is Parkinson's UK, a charity that drives better care, treatment and quality of life for those affected by Parkinson's. To make a donation, please visit
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