

**HARBOURS ACT 1964 (AS AMENDED)**

**PROPOSED HARBOUR DIRECTIONS  
FOR  
SUTTON HARBOUR  
2017**

**Explanatory Statement**

## 1. INTRODUCTION

Sutton Harbour Company is the statutory harbour authority for Sutton Harbour. Following a review of its local statutory harbour legislation it was confirmed that Sutton Harbour Company did not have powers of General Direction. Therefore, in accordance with the recommendation contained within the Port Marine Safety Code, Sutton Harbour Company applied to be designated with powers of Harbour Direction. Following consideration of the application, Sutton Harbour Company was designated with powers of Harbour Direction on 6 April 2015, in the Harbour Directions (Designation of Harbour Authorities) Order 2015.

Following its designation Sutton Harbour Company, with the assistance of its legal advisors, has undertaken a full review of its current Harbour Direction and Byelaw making powers and its current byelaws (which date from 1926). This review has included considering risks and management issues at Sutton Harbour and current methods of managing them (including notices, dissemination of information, mooring terms and conditions and other similar contractual arrangements). Discussions have also taken place with Cattewater Harbour Commissioners and the Dock Yard Port of Plymouth about overall management of the areas where statutory harbour jurisdictions overlap.

Although some of our Byelaws from 1926 are still relevant, the language used within them is outdated and the fine levels are too low for them to act as a deterrent or for prosecution under them to be a realistic option. Although many of the harbour users at Sutton Harbour do comply fully with the notices and other information provided to them by officers of Sutton Harbour Company, there is nevertheless a need to be able prosecute those who do not, if such action would be proportionate and in the public interest. Relevant public interest considerations include:

- whether the offending has been intentional, reckless or grossly negligent;
- the degree of harm caused;
- any previous history of offending;
- whether there has been repeated or protracted contravention of the harbour direction, and;
- whether the offender has been uncooperative or obstructive.

We would also need to be satisfied beyond reasonable doubt that an offence has been committed and that there is sufficient evidence to convict.

It is considered that the impact on most harbour users will be minimal as the proposed draft Harbour Directions does not introduce new requirements, as nearly all of the matters are covered by our current notices, information disseminated, moorings terms and conditions and, other similar contractual arrangements.

Therefore, although Sutton Harbour Company would only expect to prosecute on a limited basis and as a last resort, it is envisaged that prosecution will occasionally be necessary in order to meet its duties in respect of managing and running a safe and efficient harbour. This would include responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and, the protection of the port environment. Occasional prosecutions will also act as a deterrent.

We are in the process of putting in place both Harbour Directions and new Byelaws to support Sutton Harbour Company in its management and running of Sutton Harbour. The new Byelaws will repeal the 1926 Byelaws and put in place new Byelaws that deal with identified risks and management matters not covered by Harbour Directions. Sutton Harbour Company has brought forward its consultation on Harbour Directions first because it is envisaged that it will take a minimum of 12-18 months to complete the Byelaw application process. Unless the Harbour Directions were progressed first there would be a further significant period of time when Sutton Harbour Company only had very limited powers of

prosecution in relation to serious incidents which may occur in the harbour. This is considered to be unacceptable from a management and risk perspective. In addition, the proposed Harbour Directions are designed to prevent incidents from occurring by encouraging compliance.

In drafting the proposed Harbour Directions, the model Harbour Directions contained in Appendix D of the Supplementary Guidance to the Code of Conduct have been used as a starting point. These have then been adapted where necessary (or deleted if not required) in respect of identified risks and management measures within Sutton Harbour. A short explanation of each Harbour Direction, and any related consultation responses received in the first round of consultation on the draft harbour directions, is set out below.

## **ARTICLE 1: COLLISION REGULATIONS**

This Harbour Direction has been adapted very slightly from the Model Direction to also cover Ships approaching or leaving the Lock. Compliance with the Collision Regulations is an important part of ensuring navigational safety and is particularly important when entering and leaving the Lock. This is due to the fact that it is likely that there will be other marine traffic in the area either waiting to use the Lock or navigating elsewhere in Cattewater Harbour.

## **ARTICLE 2: SPEED LIMIT**

Sutton Harbour is an enclosed basin behind a Lock. As such, navigation is operating in a restricted area and it is important that Ships are being navigated at a low speed to assist in ensuring safety of navigation. Again, a slow speed when entering and leaving the Lock is important due to the likelihood of other marine traffic in the area and the need to navigate into and out of the Lock safely.

The Harbour Direction has been carefully drafted to allow any Ship that cannot safely be navigated at under 4 knots to request permission of the Harbour Master at a higher speed. A suitable risk assessment can then be conducted and, if appropriate, permission given.

As set out above, Sutton Harbour is an enclosed lock basin with a large number of vessels, pontoons etc. in close proximity to each other (whether moored or underway) as such it is also important that Ships are navigated at all times with due care and attention and so as not to endanger their safety or cause a nuisance. Wash from vessels is a particular issue in an enclosed harbour like Sutton Harbour.

## **ARTICLE 3: NAVIGATING UNDER INFLUENCE OF ALCOHOL AND DRUGS**

This Harbour Direction is an exact replica of the Model Direction. The dangers associated with navigating a Ship whilst a person's ability to do so is impaired through drink or drugs is self-evident.

## **ARTICLE 4: REPORTING COLLISIONS AND SUNK OR GROUNDING SHIPS**

This provision is a simplified version of the Model Direction. It is important that the Harbour Master is informed of any collisions in the harbour to ensure any required action to assist / safeguard can be taken in respect of that collision and that any patterns are monitored and, where necessary, appropriate risk measures are put in place.

Where a Ship has sunk or grounded then the Harbour Master must be informed immediately so that steps can be taken to prevent further accidents, navigation incidents and pollution.

## **ARTICLE 5: UNSEAWORTHY SHIP**

This Harbour Direction is an exact replica of the Model Direction. The dangers associated with navigating an unsafe or unseaworthy Ship in the harbour are self-evident. Nevertheless, the Harbour Direction is carefully drafted to enable such a Ship to be navigated as necessary for the safety of the Ship and its crew without fear of prosecution.

## **ARTICLE 6: MANNING BY COMPETENT PERSONS**

This Harbour Direction is an exact replica of the Model Direction, except that it has been adapted to expressly mention the Lock. All three parts of the Harbour Direction are considered important in respect of safety and environmental protection.

Two consultation responses have questioned whether a 'competent person' needs to be defined and one consultation response has indicated that the respondent is unsure whether a person under 16 can hold an appropriate RYA qualification. In addition, another consultation response considered that it would not be possible for most of the yachts in the marina to comply with article 6b at any one time.

In respect of the consultation responses regarding whether a 'competent person' should be defined, it should be noted that the decision was taken by industry and in particular the National Directions Panel members not to define a 'competent person' in the Model Directions. Who is a competent person will depend on the Ship in question. It would, therefore, be very restrictive and potentially unfair on harbour users to define by reference to specific qualifications. In addition, Sutton Harbour Company considers (in line with the Supplementary Guidance to the Code of Conduct applying to Harbour Directions) that it is best to follow Model Directions where possible, and for that reason is not proposing to define a 'competent person' within the Harbour Directions.

In respect of whether yachts in the marina can comply with 6b, the wording of 6b is an exact replica of the Model Direction and it was considered to be a reasonable requirement by the National Directions Panel (which includes the Royal Yachting Association as a member) in considering and approving the Model Directions. As such, Sutton Harbour Company does not consider that the requirement is unreasonable and considers that Ships in the Harbour will be able to comply with it. However, if the concern is maintained, and other consultees do not object, Sutton Harbour Company would be happy to amend the Harbour Direction to remove the reference to '*when conditions require*' and instead limit it to '*in any event when reasonably required by the Harbour Master*'.

Regarding the consultation response about whether a person under 16 can hold an appropriate RYA qualification, Sutton Harbour Company would note that the Royal Yachting Association (RYA) is a member of the National Directions Panel and, therefore, played a central role in agreeing the Model Directions. As such, Sutton Harbour Company considers that it is unlikely that an incorrect reference has been made to a potential RYA qualification and is intending to leave the wording as drafted. However, if the concern is maintained, and the RYA does not object, Sutton Harbour Company would be happy to amend the Harbour Direction to remove the reference to an appropriate RYA qualification and instead require permission from the Harbour Master only. However, this is considered to be more restrictive to harbour users and as such, Sutton Harbour Company's preference is to keep the proposed wording as close to the Model Direction as possible.

## **ARTICLE 7: LIGHTS IMPEDING SAFE NAVIGATION**

This Harbour Direction is an exact replica of the Model Direction. The use of lights (particularly lasers and beams) on a Ship other than in the interests of safe and proper navigation can impede the safe navigation of other Ships and generally cause a nuisance.

#### **ARTICLE 8: MOORING AND ANCHORING**

This Harbour Direction is adapted from the Model Direction and has been refined to cover the specific circumstances in Sutton Harbour. 8(b) has been included to deal with a specific issue relating to Ships rafted from the Quay, where there have been occasions, despite clear instructions, that fore and aft lines have not been secured. If one of the rafted Ships is then moved, any Ship which has not been secured with fore and aft lines in the raft poses a danger to navigation and a risk of damage to other Ships.

#### **ARTICLE 9: OBSTRUCTION OF AIDS TO NAVIGATION**

This Harbour Direction is an exact replica of the Model Direction. The potential dangers caused to safe navigation of a Ship obstructing, making fast to, or otherwise interfering with aids to navigation are self-evident.

#### **ARTICLE 10: OBSTRUCTION OF PUBLIC LANDINGS**

This Harbour Direction is an exact replica of the Model Direction. It is important that public landing places in the harbour are kept clear to enable users of the harbour to be able to exercise their rights of public navigation and to access them in a safe manner.

#### **ARTICLE 11: FISHING WITHIN HARBOUR AREAS**

This Harbour Direction has been adapted from the Model Direction. The Model Directions have been drafted as a starting point for all harbours with powers of harbour direction. In many of these the harbour limits are far more extensive than Sutton Harbour, which as stated above is an enclosed body of water and, therefore, most fishing activities carried out from a Ship have the potential to impact on, or cause an obstruction to navigation. For this reason and given the number of vessels, pontoons and other infrastructure in the Harbour fishing from Ships is already not permitted in the Harbour. This Harbour Direction simply provides for a route of enforcement against those who do not comply.

One of the consultation responses raised a concern regarding the use of the words 'any other fishing activity' and whether this would prevent children crabbing in the Harbour and / or affect activities at the Fish Market. However, the Harbour Direction only applies to fishing activities carried out from a Ship. Crabbing, therefore, from the Harbour walls and other infrastructure is not affected by this Harbour Direction. In addition, the Harbour Direction allows for fishing activities to be carried out from Ships with the permission of the Harbour Master. Therefore, if there are harbour users which want to carry out a very low impact fishing activity from a Ship, all they need to do is request the permission of the Harbour Master and in any event there would be no public interest in prosecuting in relation to a very low impact fishing activity. In addition, the activities carried out at the Plymouth Fisheries Hub Complex are fisheries related (loading, unloading, transportation and sale of fish) not fishing activities. As such, even in so far as these activities are carried out on board a Ship, they are not affected by the proposed Harbour Direction.

#### **ARTICLE 12: OPEN FIRES ON BOARD A SHIP**

This Harbour Direction is an exact replica of the Model Direction. The potential dangers caused by persons lighting an open fire (other than a cooker or barbecue designed for use on board a Ship) on any Ship or transferring such cookers or barbecues to a pontoon or quay in a harbour as confined as Sutton Harbour are self-evident.

#### **ARTICLE 13: DISCHARGE OF OIL, SEWERAGE AND WASTE**

This Harbour Direction is an exact replica of the Model Direction. Discharge of oil, sewerage and waste into the Harbour has serious environmental consequences and can also damage property. There has been a number of such incidents in the Harbour in recent years and the Harbour Direction is required to encourage compliance and the exercise of greater care.

#### **ARTICLE 14: REFUELLING IN THE HARBOUR**

This Harbour Direction is additional to the Model Directions. As stated in the supplementary guidance to the Code of Conduct, the Model Directions are not intended to be exhaustive. The additional Harbour Direction has been included because despite clear requirements in relation to refuelling / discharge of fuel from Ships in the harbour, there has nevertheless been fuel spills in the harbour related to refuelling / discharge of fuel from vessels. Most recently, a substantial fuel spill led to Sutton Harbour Company bringing a successful prosecution under the Merchant Shipping Act 1995. However, to meet its environmental duties, Sutton Harbour Company wishes to prevent such incidents occurring rather than bring prosecutions based on pollution in the aftermath of a serious incident. This Harbour Direction has been included to encourage compliance with the requirements already in place in Sutton Harbour.

One consultation response queried which heading the proposed Harbour Direction falls under (manning, equipment, movement, mooring and unmooring). It is considered that in a similar way to Articles 12 and 13 it relates to equipment (the fuel tank on a Ship is part of its equipment) and manning. However, to make this clearer, Sutton Harbour Company is happy, following the close of the consultation process to reword the Harbour Direction as set out immediately below.

It is not considered that the potential amendments set out below change the substantive effect of the Harbour Direction as originally drafted because Sutton Harbour Company already requires a person to be present at all times during refuelling or discharge of fuel from a vessel in the Harbour. In addition, on further consideration, Sutton Harbour Company considers that it would be beneficial to expressly state that only those Ships that are not refuelling at a fuel quay which has been authorised under a Designated Fuel Quay Agreement, need to obtain prior approval of the Harbour Master as the Designated Fuel Quay Agreement is considered sufficient to act as prior approval because a risk assessment is carried out prior to grant.

#### **14. Refuelling in the Harbour**

*a) During the recharging or emptying of a Ship with / of fuel within the Harbour, the Ship must be under the control or direct supervision of a competent person who has either obtained the prior approval of the Harbour Master for the recharging or emptying of the Ship with / of fuel, or is carrying out the activity at a fuel quay, which the Ship is authorised to use under a valid Designated Fuel Quay Agreement.*

*b) During the recharging or emptying of a Ship with / of fuel the competent person in control of or directly supervising the Ship must ensure that the recharging or emptying of a Ship with / of fuel is carried out in accordance with the requirements of the Harbour Master.*

*c) No person shall permit or cause any spillage of fuel during the recharging or emptying of a Ship's equipment with / of fuel.*

*d) The Master of a Ship must immediately report to the Harbour Master any spillage of fuel during the recharging or emptying (in whole or part) of a Ship with / of fuel, however caused. In such circumstances, the Master must comply with any directions issued to the Master by the Harbour Master.*

The following definition would also need to be inserted into the Harbour Directions:

*'Designated Fuel Quay Agreement' means a written agreement with the Harbour Authority in relation to the use of a prescribed area in the Harbour for the recharging or emptying of a Ship or Ships with / of fuel which contains terms and conditions relating to the carrying out of such activities. The written agreement must be valid and not have expired at the time the activity is carried out.*

A further consultation response considered that refuelling directly from barrels, or similar containers, posed an increased risk of spillage and, therefore, consideration should be given as to whether refuelling from such containers should be specifically banned in the harbour direction. Moreover, that potentially an additional limb to the Harbour Direction should be included stating that no one should attempt to use detergent to disperse an oil spill in the Harbour. It is considered that both suggestions are valid and sensible. However, Sutton Harbour Company considers that the requirement to act in accordance with the requirements of the Harbour Master contained in 14(a) of both the originally proposed Harbour Direction and the revised Harbour Direction set out above adequately covers both of the points raised in the response. Furthermore, the revised 14(d) above, follows Model Direction Article 13 in stating that the Master must comply with any directions issued to the Master by the Harbour Master. A requirement not to use detergent to disperse a fuel spill can be restated at this point and is also covered in respect of Oil spills by the similar provision in Article 13.

#### **ARTICLE 15: NOTIFICATION OF ARRIVAL AND DEPARTURE**

This Harbour Direction has been adapted from the Model Direction. The Lock is the only means of entry to, and exit from, Sutton Harbour. To ensure navigational safety, and due to the confined nature of Sutton Harbour, it is very important that all Ships have a VHF radio (or other means of communication approved by the Harbour Master) which is switched on and tuned in to the assigned lock control channel before approaching the Lock, entering or leaving the Harbour, or, getting underway in the Harbour. It can cause serious navigational safety issues if the lock keepers are unable to communicate with Ships in the Harbour carrying out the activities set out above.

#### **ARTICLE 16: AUTOMATIC BACK-UP STEERING GEAR**

This Harbour Direction has been adapted from the Model Direction. Due to the confined nature of Sutton Harbour it is not considered safe for either a Commercial Ship or Recreational Craft (as defined in the Harbour Directions) to operate an automatic steering device without the prior approval of the Harbour Master. The requirement to obtain prior approval will ensure that an appropriate risk assessment can be carried out by Sutton Harbour Company before permission is given, thereby enabling Sutton Harbour Company to comply with its duties relating to safety of navigation.

#### **Consultation on Harbour Directions**

Three of the consultation responses to the initial 28 day consultation requested that further explanatory information was provided about the proposed Harbour Directions. Two of these consultation responses requested that a further period of consultation be carried out to enable all those interested to respond. One requested further information about the Port User Group.

The terms of reference for the Port User Group are contained in Annex 2 to this explanatory document. In accordance with the Code of Conduct on Harbour Directions the Port User Group was provided with the draft Harbour Directions for consideration on 19 October 2017.

This document has been drafted to provide further explanatory information and takes into account consultation responses received in the first 28 day consultation.

Sutton Harbour Company are now running a further 28 day public consultation on the proposed Harbour Directions. The consultation period will run from 23 February 2018 and close on 23 March 2018. It is envisaged that this will be the last round of consultation, therefore, all those interested should respond within the 28 day period. The consultation notice (containing details of how to respond and how to request copies of the draft Harbour Directions and this document) is included in Annex 1 to this document.

As with the first round of public consultation, the consultation notice will also be placed at the following locations during the consultation period:-

- Plymouth Trawler Agents Office
- Pam's Snacks
- Gaelforce Chandlery
- Harbour Notice Board
- Marina Notice Board
- Shepherds Wharf notice board
- Plymouth Fisheries Hub Complex entrance.

In addition, notices will be placed on popular social media sites and on the Marina at Sutton Harbour's and Plymouth Fisheries Hub Complex's websites.

**Annex 1**  
**Consultation Notice**



# Sutton Harbour Company

## Harbour Directions - Consultation

Sutton Harbour Company, as a Statutory Harbour Authority, was designated with powers of Harbour Direction on 6 April 2015. Following this designation Sutton Harbour Company proposes to introduce new Harbour Directions, because current byelaws, whilst relevant, are inadequate for the traffic using the Harbour.

### Harbour Directions

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:

- to regulate the use of any main navigation channel or fairway;
- to prescribe where and how vessels are to moor and move within the harbour;
- to ensure ships above a certain size have working radios to allow communication between Harbour Master and ship;
- to specify requirements for no deficiency in machinery; and,
- 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.

### Compliance with the Harbour Directions Code of Conduct

This consultation on the proposed introduction of new Harbour Directions is being carried out in accordance with the Harbour Directions Code of Conduct.

This consultation seeks views, comments and/or observations on the proposed draft Harbour Directions, a copy of which (and accompanying explanatory document) can be obtained on request from The Harbour Master, Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA: e-mail [P.bromley@sutton-harbour.co.uk](mailto:P.bromley@sutton-harbour.co.uk).

Consultation responses should be provided in writing and received by The Harbour Master, Tin Quay House, Sutton Harbour, Plymouth, PL4 0RA: e-mail [P.bromley@sutton-harbour.co.uk](mailto:P.bromley@sutton-harbour.co.uk) by 23 March 2018.



**Annex 2**  
**Terms of Reference of the Port User Group**

## **TERMS of REFERENCE for PORT USER GROUP**

For the Cattewater/Sutton Harbour (Plymouth) – Port User Group relating to Harbour Directions for the Movement, Mooring, Manning & Equipment of ‘ships’.

ToR dated: 8 October 2015

**Purpose of group.** To act as consultees for any proposed Harbour Directions related to the Movement, Mooring, Manning & Equipment of ‘ships’ and, in compliance with the Code of Conduct on Harbour Directions (arising from the supplementary guidance of the National Directions Panel), to resolve, where possible, local differences.

**Membership** is drawn from the Port of Plymouth Marine Liaison Committee (PPMLC) and comprises representatives of activities taking place in the harbour. Requests to join from persons representing bodies which are not represented by the membership of the PPMLC will be considered by the secretariat.

**Members:** A representative from the following organisations/groups

- Plymouth University Marine Station
- R.Y.A.
- Natural England
- Plymouth City Council
- Mount Batten Centre
- MoD Marine Police
- R.N.L.I.
- Commercial Harbour Tour Craft
- QHM (MoD interests)
- Commercial Ships Agents
- Port of Plymouth Sailing Association
- Maritime and Coastguard Agency
- Yacht Marina Operators

The Chair and Secretary shall be elected from within the group.

The agenda will be developed by the secretariat to address the matters in hand.

Meeting will, whenever, Harbour Directions are proposed by the Harbour Authority, be held after the PPMLC meetings, or whenever a request is made by five or more members of the group.