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SOUTH HAMS SALCOMBE HARBOUR BOARD - MONDAY, 8TH APRIL, 2013

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Agenda Letter** (Pages 1 - 2)

2. **Reports**

Reports to Harbour Board:

a) Item 8 - Review of Bye Laws Enforcement Policy (Pages 3 - 26)

b) Item 9 - Topical Harbour Issues (Pages 27 - 30)

c) Item 10 - Matters for Future Consideration (Pages 31 - 34)

d) Item 12 - EXEMPT - Commercial venture (Pages 35 - 44)

3. **Minutes** (Pages 45 - 48)

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Agenda Item 1

To: Chairman & Members of the Salcombe Harbour Board
(Cllrs R J Carter, M J Hicks, KRH Wingate and S A E Wright)
Co-opted Members – Mr J Barrett, Mr C C Harling,
Mr H Marriage, Mr M Mackley, Mr A Thomson and Mr P Waring)

Our Ref: CS/KT

cc: Remainder of Council for information
Usual press and officer circulation

27 March, 2013

Dear Member

A meeting of the **Salcombe Harbour Board** will be held at **Cliff House, Salcombe** on **Monday, 8 April, 2013**, at **2.30 pm** when your attendance is requested.

Yours sincerely

Kathryn Trant
Member Services Manager

<p>FOR ANY QUERIES ON THIS AGENDA, PLEASE CONTACT KATHRYN TRANT THE SENIOR MEMBER SUPPORT OFFICER ON DIRECT LINE 01803 861185</p>
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A G E N D A

1. **Apologies for Absence;**
2. **Minutes** - to approve as a correct record and authorise the Chairman to sign the minutes of the meeting of the Board held on 4 February, 2013 (pages 1 to 7);
3. **Urgent Business** - brought forward at the discretion of the Chairman;
4. **Division of Agenda** - to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;
5. **Declarations of Interest** – Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests, they may have in any items to be considered at this meeting;
6. **Public Question Time** – a period of up to 15 minutes is available to deal with questions from the public;
7. **Feedback from Harbour Community Forums** – to receive verbal reports from Board Members who attend the Harbour Community Forums on behalf of the Board;

8. **Review of Bye Laws Enforcement Policy** – to consider a report that asks Members to review the enforcement policy for Harbour bye laws (pages 8 to 29);
9. **Topical Harbour Issues** – to consider a report which sets out a range of topical harbour issues that do not warrant a separate report in their own right (pages 30 to 32);
10. **Matters for Future Consideration** – to consider a report which identifies matters for future consideration by the Harbour Board (pages 33 to 36);
11. **Exclusion of Public and Press** - to consider the following resolution to exclude the public and press:-

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Act”;
12. **Commercial venture** – to consider a report in relation to a commercial venture (pages 37 to 44).

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MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER

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AGENDA
ITEM

8

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

8

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	8 April 2013
REPORT TITLE	REVIEW of BYE-LAWS ENFORCEMENT POLICY
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of report:

To review the enforcement policy for Harbour bye-laws.

Financial implications:

There are no direct financial implications from this report.

RECOMMENDATIONS:

That the Harbour Board RESOLVES to recommend the adoption of the Enforcement Policy at Annex B to this report.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 Salcombe Harbour Authority is a statutory harbour authority and has a duty to regulate navigation within its harbour. They also have a power to make bye-laws to provide an enforceable legal framework that can be used to assist in regulation.

- 1.2 Bye-laws provide general rules for navigation and the conduct of a vessel within the jurisdiction of a Harbour Authority. In addition to these powers, The Harbour Master is able to give special directions to vessels within his area of authority in respect of when and how they may enter the harbour and where and how they may moor.
- 1.3 In 2011 the Harbour Authority published their Enforcement Policy; this report instigates a review of that policy.
- 1.4 The Marine Navigation (No 2) Bill 2012-13, a Private Members Bill has reached the committee stage with the 1st sitting in the House of Lords on 1 February 2013. The Bill is to make provision in relation to marine navigation and harbours and will directly affect Salcombe Harbour as it will potentially give the Harbour Authority the power to give directions (“harbour directions”). The other aspects of the Bill will not directly affect the Salcombe Harbour Authority at present.
- 1.5 Harbour Directions will effectively replace harbour bye-laws, and will be, following a period of consultation and publicity, in place and enforceable within a much shorter period than bye-laws. The lead time would be months rather than years and within the control of the Harbour Authority rather than the Department for Transport. This change has been supported by the British Ports Association (BPA) and the United Kingdom Harbour Masters Association (UKHMA); however it has not been so well received by the Royal Yachting Association (RYA).
- 1.6 While the RYA acknowledges the rationale behind most of the provisions in the Bill, they are greatly concerned that under clause 5 of the Bill that an un-elected designated harbour authority would have greater power to create new criminal offences than does a democratically elected Local Authority. Clearly this would not be the case with Salcombe Harbour as the Harbour Authority is the District Council which is democratically elected.
- 1.7 Despite a strong lobby from the RYA it currently appears that the Bill is unlikely to be changed, however the RYA is working with the BPA to develop a voluntary Code of Practice of the issuing of Harbour Directions. The situation is still developing and may yet change.

2. ISSUES FOR CONSIDERATION

- 2.1 Until there is a change in the law and the Marine Navigation Act is enacted, the Harbour Authority Bye-laws and certain other powers remain extant and may be used to prosecute offences committed within the harbour area.

When deciding whether or not to prosecute the Harbour Authority should be guided by a published enforcement policy, which should be reviewed regularly. The existing policy has been revised and is at Appendix B.

2.2 There are a number of potential bye-law updates highlighted during the 2012 Port Marine Safety Code Audit (SH 51/12) which could be considered, but with the impending introduction of the Marine Navigation Bill, it is proposed to leave these until the next review in 2014. A Bye-Law change would take at least 18 Months and would therefore not be complete before the Marine Navigation Bill completes its course through Parliament, there is therefore no advantage from progressing any changes to the Bye-Laws at the present. The potential Bye-Law issues include:

- Windsurfing in main fairway during July and August.
- Cruising yachts of 7m and larger sailing between the Salcombe Harbour Hotel and the Saltstone in July and August.
- Scrubbing foulings within the estuary that could subsequently pollute the water.

4. LEGAL IMPLICATIONS

4.1 The Harbour Board is responsible for making and enforcing policies for the regulation and safe conduct of Salcombe Harbour. It is right and proper to review the policies for conducting enforcement from time to time in the light of experience and prevailing circumstances.

4.2 The appended enforcement policy has been updated and accords with current legal requirements including the Human Rights Act.

5. FINANCIAL IMPLICATIONS

5.1 There are no direct financial implications from this report.

6. RISK MANAGEMENT

6.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
Without a clear and published enforcement policy, harbour users will not be clear of the implications of not complying with Harbour Bye-laws	3	3	9	Regular review of and consistent Enforcement of the published policy.

Harbour Bye-Laws will not be enforced in a consistent way.	2	3	6	By having a clear enforcement policy both harbour staff and harbour users will be in no doubt regarding the policy for the enforcement of the Harbour Bye-laws. The Enforcement Policy gives a framework and guidance to both offices and harbour users on the enforcement of bye-laws and the consequences of non compliance.
Bye-Laws are out of date and do not address the current problems within the Harbour	3	2	6	Bye-Laws reviewed annually. The minor changes currently outstanding are manageable in the short term with the most expedient way of making any changes being the introduction of the Marine Navigation Bill 2012-13. Bye-Law changes are extremely difficult to progress through the DfT and could take up to 2 years.

7. OTHER CONSIDERATIONS

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers:	The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).
Considerations of equality and human rights:	A person accused of contravening civil or criminal law has the right to a fair hearing, to have their views considered before action is taken, and, if it comes to it, to a fair trial. They are also entitled to be treated without unlawful discrimination of any kind. The enforcement policy has been drafted with these requirements in mind.
Biodiversity considerations:	None

Sustainability considerations:	None
Crime and disorder implications:	The Enforcement Policy gives clear guidance on the enforcement of Harbour Bye-Laws
Background papers:	Salcombe Harbour Bye-laws PMSC Audit 2012 (SH 51/12)
Appendices attached:	A. The Marine Navigation (No2) Bill 2012-13 <i>as at 27 Feb 13</i> . B. Salcombe Harbour Enforcement Policy dated 8 April 2013

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Marine Navigation (No. 2) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Transport with the consent of Baroness Wilcox, the member in charge of the Bill, are published separately as HL Bill 64 – EN.

Marine Navigation (No. 2) Bill

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A
B I L L

TO

Make provision in relation to marine navigation and harbours.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Pilotage

1 Power to remove harbour authorities’ pilotage functions

- (1) In section 1 of the Pilotage Act 1987 (meaning of “competent harbour authority”) after subsection (4) insert—
- “(4A) A harbour authority in England or Wales is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Secretary of State under this subsection. 5
- (4B) A harbour authority in Scotland is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Scottish Ministers under this subsection.” 10
- (2) For subsection (5) of that section (power to revoke or amend where circumstances change) substitute—
- “(5) An order under this section may be amended or revoked by further order.”
- (3) In subsection (7) of that section (procedure for certain orders) for “this section” substitute “subsection (3) or (4)”. 15
- (4) After subsection (8) of that section insert—
- “(8A) Before making an order under subsection (4A) or (4B) the person making the order must consult—
- (a) any harbour authority to which the order would apply, and 20
- (b) anyone else who the person making the order thinks appropriate.

(8B) An order under this section may include transitional, consequential, incidental or supplemental provision.”

- (5) In section 1A(1) (procedure for certain orders: Scotland) after “other than subsection (4)” insert “or (4B)”.

2 Pilotage exemption certificates: grant 5

- (1) In section 8(1) of the Pilotage Act 1987 (grant) –
- (a) for “the master or first mate” substitute “a deck officer”, and
 - (b) in paragraph (a) for “master or first mate” substitute “a deck officer”.
- (2) In section 8(5)(a) (renewal) for “the master or first mate of a ship” substitute “a deck officer of a ship”. 10
- (3) In sections 10(3), 15(1)(b) and 20(1)(a) (pilotage charges, compulsory pilotage and boarding facilities for pilots) for “master or first mate” substitute “deck officer”.
- (4) In section 31(1) (interpretation) at the appropriate place insert –
- ““deck officer”, in relation to a ship, includes the master and first mate;”.
- 15

3 Pilotage exemption certificates: suspension and revocation

- (1) After section 8 of the Pilotage Act 1987 insert –
- “8A Pilotage exemption certificates: suspension and revocation**
- (1) A competent harbour authority may by written notice suspend or revoke a person’s pilotage exemption certificate in the following cases. 20
- (2) Case 1 is where an event has occurred as a result of which the authority is no longer satisfied of the matters specified in section 8(1)(a).
- (3) Case 2 is where the authority thinks that the person has provided false information to the authority as to any of those matters. 25
- (4) Case 3 is where the authority thinks that the person has been guilty of professional misconduct while piloting a ship.
- (5) Case 4 is where –
- (a) pilotage notification was given under section 15(4)(b) in reliance on the person’s certificate, and
 - (b) in the event, the pilotage was carried out by a person who was neither an authorised pilot nor acting in accordance with a pilotage exemption certificate.
- 30

8B Section 8A: supplementary

- (1) The maximum period for which a pilotage exemption certificate may be suspended is 28 days. 35
- (2) But if a harbour authority has suspended a person’s certificate and is considering whether to revoke it, the authority may by written notice extend the suspension for a single period of up to 28 days.
- (3) A suspended certificate may be revoked (on the same or different grounds). 40

- (4) Before revoking a person's certificate a harbour authority must—
- (a) give the person written warning, stating the reasons for the proposed revocation, and
 - (b) allow the person a reasonable opportunity to make representations. 5
- (5) A competent harbour authority which has suspended or revoked a certificate may pay compensation to any person who has suffered, or is likely to suffer, loss as a result.”
- (2) In section 8—
- (a) omit subsection (6) (revocation and suspension of certificates), and 10
 - (b) in subsection (7) (notice) omit “or suspending or revoking a certificate held by any person”.
- 4 Pilotage notification**
- For section 15(3) of the Pilotage Act 1987 (notification by master navigating ship) substitute— 15
- “(3) The master of a ship commits an offence if—
- (a) the ship is navigated in an area in which a pilotage direction applies to it, and
 - (b) the competent harbour authority which gave the direction has not been given pilotage notification. 20
- (4) Pilotage notification is notification that the ship will be navigated in an area in which a pilotage direction will apply to it and—
- (a) that an authorised pilot is required to pilot the ship, or
 - (b) that an authorised pilot is not required because the ship will be piloted by a specified person acting in accordance with a pilotage exemption certificate. 25
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”

Harbour authorities

5 Harbour directions 30

- (1) After section 40 of the Harbours Act 1964 insert—

“Harbour directions

40A Directions

- (1) A designated harbour authority may give directions (“harbour directions”) in respect of ships— 35
- (a) within their harbour, or
 - (b) entering or leaving their harbour.
- (2) A harbour direction may relate to—
- (a) the movement of ships;
 - (b) mooring or unmooring; 40

- (c) equipment (including nature and use);
 (d) the manning of ships.
- (3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.
- (4) “Designated harbour authority” means – 5
 (a) a harbour authority for a fishery harbour in Wales who are designated by order of the Welsh Ministers,
 (b) a harbour authority for any other harbour in England or Wales who are designated by order of the Secretary of State, and
 (c) a harbour authority for a harbour in Scotland who are designated by order of the Scottish Ministers. 10
- (5) A harbour direction is subject to any direction under section 52 of the Harbours, Docks and Piers Clauses Act 1847 (directions by harbour master).
- (6) A harbour authority may not give a harbour direction which conflicts with an enactment. 15
- (7) An order designating a harbour authority may amend or repeal any statutory provision of local application which the person making the order thinks is – 20
 (a) inconsistent with the power to give harbour directions, or
 (b) unnecessary as a result of the power.
- 40B Procedure**
- (1) Harbour directions must be in writing.
- (2) Before giving harbour directions a harbour authority must consult such representatives of users of the harbour as the authority think appropriate. 25
- (3) A harbour authority must make such arrangements as they think appropriate for publicising a proposed harbour direction for at least 28 days before it is given.
- (4) A harbour authority must – 30
 (a) make harbour directions available for inspection, and
 (b) supply a copy to anyone who requests it.
- (5) A harbour authority may charge for the supply of copies.
- (6) As soon as is reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news – 35
 (a) stating that a harbour direction has been given, and
 (b) giving details of the arrangements for the inspection and supply of copies of harbour directions.
- 40C Enforcement** 40
- (1) The master of a ship must ensure that harbour directions are complied with.
- (2) Breach of subsection (1) without reasonable excuse is an offence.

- (3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40D Supplemental

- (1) Harbour directions –
- (a) may make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and 5
 - (b) may make different provision for different circumstances, areas, periods or descriptions of ship.
- (2) Harbour directions may be varied or revoked by subsequent harbour directions. 10
- (3) In section 40A –
“mooring” includes casting anchor, and
“unmooring” includes weighing anchor.”
- (2) In section 54 (orders and regulations) at the end insert – 15
- “(5) A power of the Secretary of State or Welsh Ministers to make an order under section 40A is exercisable by statutory instrument.
- (6) A statutory instrument containing an order under section 40A –
- (a) if made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament, 20
 - (b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) In section 57(1) (interpretation) insert at the appropriate place –
““master”, in relation to a ship, means the person who has command or charge of the ship for the time being;” 25

6 Harbour closure orders

- (1) After section 17 of the Harbours Act 1964 insert –

“Harbour closure orders

17A Power to make closure order

- (1) The Secretary of State may make an order under this section in respect of a harbour (a “closure order”) – 30
- (a) on the application of the harbour authority,
 - (b) with the consent of the harbour authority, or
 - (c) if the Secretary of State has consulted the harbour authority and is satisfied that they are unlikely to object. 35
- (2) The Secretary of State must publish guidance about the circumstances in which a closure order will be made. The guidance –
- (a) must require the Secretary of State to have regard to the underlying purpose, and
 - (b) must be reviewed and (if appropriate) revised from time to time. 40

- (3) In this section –
- (a) “the underlying purpose” means the purpose of permitting or requiring harbour authorities to cease to maintain harbours which are no longer commercially viable or necessary;
 - (b) “the harbour authority” in relation to a harbour means any harbour authority which has statutory duties to manage, maintain or improve the harbour. 5

17B Content of closure order

- (1) A closure order must relieve the harbour authority of –
 - (a) all statutory functions in respect of the harbour, or 10
 - (b) specified statutory functions in respect of the harbour.
- (2) A closure order may transfer specified functions of the harbour authority to a specified body (with the body’s consent).
- (3) A closure order must include transitional provision about the cessation of the harbour authority’s functions (including provision about rights and liabilities in relation to the performance of functions before the closure order takes effect). 15
- (4) A closure order may –
 - (a) permit or require the harbour authority to carry out works in respect of the harbour; 20
 - (b) permit the Secretary of State to carry out works in respect of the harbour;
 - (c) require a harbour authority to pay for works carried out under paragraph (b);
 - (d) confer on the harbour authority or the Secretary of State power to acquire (whether by agreement or compulsorily) land described in the order as the site of works to be carried out under paragraph (a) or (b). 25

17C Harbour closure orders: property etc

- (1) A closure order may include provision for the transfer of property, rights and liabilities of the harbour authority. 30
- (2) In particular, a closure order may include provision –
 - (a) transferring things that would otherwise not be capable of being transferred;
 - (b) creating interests, rights or liabilities in relation to things transferred or in connection with a transfer; 35
 - (c) for enforcement of rights or liabilities (whether transferred or created by the order);
 - (d) about the transfer of rights and liabilities in relation to employment (including provision for deemed continuity); 40
 - (e) about pension schemes (including provision for amending schemes, winding them up, transferring their administration, and saving rights existing before a transfer takes effect);
 - (f) terminating appointments;
 - (g) for compensation for loss of employment (or office). 45
- (3) A closure order may include provision –

- (a) extinguishing liabilities to the Secretary of State;
 - (b) about the winding up of the harbour authority's affairs;
 - (c) about the winding up of any company wholly owned by the harbour authority;
 - (d) about the dissolution of the harbour authority. 5
- (4) A provision of a closure order transferring property, rights or liabilities may –
- (a) make the transfer subject to a condition (such as the grant of an interest in favour of a third party), and
 - (b) include provision about the effect of failure to comply with the condition. 10
- (5) Provision under this section may confer a function on the Secretary of State. 5
- 17D Harbour closure orders: procedure**
- (1) Part 1 of Schedule 3 has effect in relation to closure orders as in relation to harbour revision orders. 15
- (2) In relation to closure orders made otherwise than on the application of the harbour authority Part 1 of Schedule 3 has effect with any necessary modifications, in particular –
- (a) ignore paragraphs 3, 5, 6, 7, 9, 13 and 14, 20
 - (b) treat a reference to the applicant as a reference to the Secretary of State,
 - (c) treat a reference to the application for an order as a reference to the proposal to make an order,
 - (d) treat a reference to being notified of a proposed application as a reference to proposing to make an order, and 25
 - (e) paragraph 8 applies if the Secretary of State decides that the order would relate to a project which falls within Annex I or II to the Directive and is a relevant project, in which case –
 - (i) the Secretary of State must prepare the environmental statement, having consulted bodies with environmental responsibilities, and 30
 - (ii) the statement must include the information specified in sub-paragraph (2) (and may include other information).
- (3) Section 44 applies in relation to closure orders as in relation to harbour revision orders. 35
- 17E Harbour closure orders: devolution**
- (1) In relation to fishery harbours in Wales –
- (a) the power to make closure orders vests in the Welsh Ministers, and 40
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Welsh Ministers.
- (2) In relation to harbours in Scotland –
- (a) the power to make closure orders vests in the Scottish Ministers,
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Scottish Ministers, and 45

- (c) the reference in section 17D(1) to Schedule 3 is a reference to that Schedule as it has effect in relation to Scotland.

17F Supplemental

- (1) A closure order may include incidental, consequential, transitional or saving provisions. 5
- (2) In particular, a closure order –
- (a) may amend, repeal or revoke an enactment of local application, and
- (b) may disapply or modify the application of any other enactment.
- (3) A closure order – 10
- (a) may make provision generally or only for specified purposes, and
- (b) may make different provision for different purposes.”
- (2) At the end of section 44 (limitation of right to challenge orders) insert –
- “(9) Section 17D(3) applies this section to closure orders.” 15
- (3) In section 57(1) (interpretation) insert at the appropriate place –
- ““closure order” has the meaning given by section 17A;”.

Port constables

7 Port constables: extension of jurisdiction in England and Wales

- (1) A port constable may, for policing purposes connected with the port constable’s police area, act outside that area. 20
- (2) A port constable may act under subsection (1) only with the consent of the chief officer of police for the police area in which the port constable is acting.
- (3) Consent –
- (a) may be given in relation to a particular port constable or any description of port constables; 25
- (b) may be given generally for all policing purposes connected with the port constable’s police area or may be limited (whether as to particular purposes, particular occasions or in any other way);
- (c) may be given subject to conditions. 30
- (4) When acting under subsection (1) a port constable has all the powers and privileges of a constable.
- (5) “Port constable” means –
- (a) a person appointed by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847, 35
- (b) a person appointed under provision made by virtue of paragraph 8 of Schedule 2 to the Harbours Act 1964, or
- (c) a person appointed under section 154 of the Port of London Act 1968 (c. xxxii).
- (6) A port constable’s police area is the area in which the port constable has jurisdiction to act, ignoring – 40

- (a) subsection (1), and
 - (b) any provision, made by or under an enactment, under which the port constable has jurisdiction to act in an area for limited purposes only.
- (7) “Policing purposes connected with the port constable’s police area” means any of the following – 5
- (a) the prevention of the commission of offences in the port constable’s police area;
 - (b) the detection or investigation of offences committed in the port constable’s police area;
 - (c) the apprehension or prosecution of offenders in respect of offences committed in the port constable’s police area; 10
 - (d) the preservation of the peace in the port constable’s police area;
 - (e) the apprehension of offenders within the port constable’s police area in respect of offences committed outside that area and the transport of them to police stations outside that area; 15
 - (f) the regulation of traffic in the port constable’s police area.
- (8) Nothing in this section limits the circumstances in which a port constable may act apart from this section.

General lighthouse authorities

8 General lighthouse authority areas 20

- (1) In section 193 of the Merchant Shipping Act 1995 (general lighthouse authorities etc) at the end insert –
- “(6) In subsection (1) references to the seas include seas in an area specified by virtue of section 129(2)(b).”
- (2) In section 255C (locating and marking wrecks) – 25
- (a) at the end of subsection (4) insert “(and for this purpose a general lighthouse authority has the powers conferred by section 253 throughout their area)”;
 - (b) omit subsection (5).
- (3) In section 255F (removal in default) omit subsection (4). 30

9 General lighthouse authorities: commercial activities

- (1) After section 197 of the Merchant Shipping Act 1995 insert –
- “197A General lighthouse authorities: commercial activities**
- (1) A general lighthouse authority may enter into agreements – 35
- (a) for the use by others of assets of the authority (“hire agreements”);
 - (b) for the provision of consultancy or other services by the authority (“service agreements”).
- (2) But an authority may enter into a hire or service agreement only if – 40
- (a) they are satisfied that it is not likely to prejudice the discharge of their functions under section 195, and
 - (b) the Secretary of State consents.

- (3) Where an authority enter or seek to enter into hire or service agreements –
- (a) expenditure of the authority incurred in connection with the agreements, and with the Secretary of State’s consent, must be paid out of the General Lighthouse Fund, and 5
 - (b) sums received by the authority under the agreements must be paid into the General Lighthouse Fund.
- (4) The Secretary of State may consent to expenditure in acquiring an asset for the purpose of entering into hire agreements only if the Secretary of State thinks that the expenditure is merely preparatory or subsidiary to hire agreements in respect of other assets (such as in the case of acquiring one asset to be used with another or to be used in fitting, maintaining or converting another). 10
- (5) An authority must send a copy of any hire or service agreement to the Secretary of State. 15
- (6) Consent under this section –
- (a) may be subject to conditions,
 - (b) may be general or specific, and
 - (c) may be prospective or retrospective.”
- (2) In section 197 omit subsections (8) to (11) (power to exploit spare capacity). 20

Manning requirements and marking wrecks

10 Manning requirements for ships

In section 47 of the Merchant Shipping Act 1995 (manning requirements) after subsection (4) insert –

- “(4A) Standards of competence or other conditions prescribed or specified by the Secretary of State under subsection (1)(b) may be expressed by reference to other documents. 25
- (4B) A reference to a document in reliance on subsection (4A) may include a reference to amendments of the document which are –
- (a) made after the conditions are prescribed or specified, and 30
 - (b) approved for the purposes of the regulations by the Secretary of State.”

11 Marking wrecks

- (1) In section 252 of the Merchant Shipping Act 1995 (c. 21) (powers of harbour and conservancy authorities in relation to wrecks) in subsection (2)(b) for “light or buoy” substitute “mark the location of”. 35
- (2) After subsection (3) of that section insert –
- “(3A) For the purposes of subsection (2)(b) a location may be marked by –
- (a) buoys, lights or other physical devices;
 - (b) the transmission of information about the location.” 40

*General***12 Extent**

- (1) An amendment or repeal made by this Act has the same extent as the enactment to which it relates.
- (2) Section 7 extends to England and Wales only. 5

13 Commencement

- (1) Sections 1 to 11 come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).
- (2) Sections 5 and 6 come into force in relation to fishery harbours in Wales on such day or days as the Welsh Ministers may by order made by statutory instrument appoint. 10
- (3) Sections 1 to 6 come into force in Scotland on such day or days as the Scottish Ministers may by order appoint.
- (4) An order under this section – 15
 - (a) may make provision generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include incidental or transitional provision (including savings).

14 Short title

This Act may be cited as the Marine Navigation Act 2012. 20

Marine Navigation (No. 2) Bill

A

B I L L

To make provision in relation to marine navigation and harbours.

Brought from the Commons on 3rd December 2012

Ordered to be Printed, 3rd December 2012

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SALCOMBE HARBOUR AUTHORITY - ENFORCEMENT POLICY

1. General Powers

1.1 Salcombe Harbour Authority is a statutory Harbour Authority and has powers to make bye-laws, Pier and Harbour Order (Salcombe) Confirmation Act, 1954.

1.2 Contravention of bye-laws may result in prosecution through the Magistrates' Court.

1.3 The Criminal Justice Act 1982 (as amended) provided for a standard scale of fines for summary offences. The range of fines applicable to contraventions of Bye-laws is: Level 2 or Level 3 (currently £500 and £1,000).

2. Principles of Enforcement

2.1 The Harbour Authority has statutory powers to regulate the conduct of vessels in the harbour's jurisdiction and to assist in managing the risks of marine operations. To these ends, enforcement action will sometimes be appropriate.

2.2 The Harbour Authority recognises that most harbour users want to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

2.3 The Harbour Authority will provide information and advice in plain language on the rules that apply and will disseminate it as widely as possible. The Harbour Authority will provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment.

2.4 The purpose of any enforcement action is to promote the safety of harbour users.

2.5 Where it appears that the Harbour byelaws may have been contravened, the Harbour Authority has the options of negotiation, education and persuasion and, where a criminal offence has occurred, of cautioning or prosecuting an offender.

2.6 The Harbour Authority will minimise the costs of compliance for users by ensuring that any action it takes is proportionate to the risks. As far as the law allows, the Harbour Authority will take account of the circumstances of the case and the operator's attitude when considering action.

2.7 The Harbour Authority will carry out its duties in a fair, equitable and consistent manner. It will seek to be clear, open and helpful in its approach to enforcement.

2.8 The Harbour Authority will seek to target enforcement resources where they are most needed and will be informed by its other policies, aims and objectives. It will liaise with other authorities and enforcement bodies as appropriate.

ENFORCEMENT ACTION

3. Enforcement action can take the form of;
 - A warning – by way of education, given by an authorised member of the harbour staff should they observe a contravention of the bye-laws.
 - A written warning explaining the way in which a bye-law has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records.
 - Suspension or revocation of a licence issued in accordance with the bye-laws. Mooring licences and contracts are issued annually and require adherence to the bye-laws.
 - Prosecution – as an ultimate sanction.
 - A combination of any of the above.

4. Consideration of action

4.1 Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will be initiated only when the alleged conduct has been such that the Harbour Authority cannot impose an appropriate sanction itself and the matter therefore requires the attention of the Court.

4.2 The Harbour Authority is committed to assisting other enforcement agencies, including the Police, to pursue their statutory duties. The Harbour Authority will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

4.3 When dealing with alleged offences,

- Officers will always identify themselves and explain the purpose of their visit or interview.
- Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this Policy.
- Having duly considered the Harbour Authority's internal policies due regard will be given to the Code for Crown Prosecutors.
- Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.
- Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 (and/ or any other relevant legislation) with due regard to the applicable Codes of Practice.
- In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/ or Maritime and Coastguard Agency.

4.4 The Harbour Authority recognises that once a prosecution has been commenced control of the matter is ceded to the Courts and the Criminal Justice System.

ENFORCEMENT FACTORS

5. In considering the appropriate enforcement action, the Harbour Authority will take into account the following;
 - The seriousness of the complaint.
 - The risk of harm to the public and others.
 - The public interest.
 - The explanation of the offender.
 - The attitude of the offender.
 - Whether the matter is a recurrence.
 - Whether there have been any other contraventions of bye-laws or Legislation by the offender.
 - The willingness of the alleged offender to prevent a recurrence of the incident.
 - Any action taken by the offender to mitigate damage/ loss to others
 - The availability of witnesses.
 - The reliability of witnesses.
 - The sufficiency of evidence.

SUSPENSION OR WITHDRAWAL OF MOORING LICENCE

6. If following consideration of these factors the Harbour Master decides that the offender's mooring licence should be suspended or revoked altogether, he will offer the offender the opportunity to make written representations about that before making any decision. If after further consideration the Harbour Master orders suspension or revocation of the licence, then the offender may make a written request for the Chairman of the Harbour Board to review that decision. The Chairman's decision will be final.

PROSECUTION

7. Prosecution, as an ultimate sanction will be considered in the following circumstances where;
 - The alleged offence is a flagrant breach of bye-laws or legislation such that public safety or well being is or has been put at risk.
 - The alleged offence involves failure to comply with a warning.
 - There is a history of similar offences.
 - The alleged offence involves risk of damage to the environment.
 - There are no other public interest factors indicating that prosecution is not appropriate.
8. In appropriate cases, the Harbour Authority will seek to recover the costs of taking enforcement action from a convicted offender. Any award of costs will be for the court to determine.

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AGENDA
ITEM

9

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

9

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	8 April 2013
REPORT TITLE	TOPICAL HARBOUR ISSUES
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of Report

To consider a range of topical harbour issues which do not warrant a separate report in their own right.

RECOMMENDATION

That the Harbour Board RESOLVES to note the report.

1. BACKGROUND

- 1.1 As the season approaches, there are a range of issues which the Board and the Public should be aware of.

2. TOPICAL HARBOUR ISSUES

2.1 Showers.

- 2.1.1 Work started on the two shower cubicles at Whitestrand on 4 February with a planned completion date of 28 March.
- 2.1.2 The showers will be provided free of charge for visiting yacht crews. Access being controlled by pin code doors with the pin code being provided when a customer pays their Harbour Dues.
- 2.1.3 The showers will be available in the season between 0700 and 2100 and during normal office hours out of season.

2.2.1 The project finally started with construction work on site on 11 March 2013. This was much later than initially planned and not ideal. The project is planned to complete by 3 July and every effort will be made to re-commission the Fish Quay slipway by 24 May, which should ensure that the fishing activity is clear of the public slipway by the late May Bank Holiday weekend.

2.3 Kingsbridge Berthing Improvements Project

2.3.1 Following a competitive tender process the Council is in the process of awarding a contract, subject to the successful award of planning permission and a Marine Management Organisation (MMO) Licence, to WALCON Marine Ltd.

2.3.2 Over the spring and summer the Harbour Master will be working with the contractor to complete the applications for the permissions and licences.

2.3.3 If all the permissions and Licences are gained in good time, it is anticipated that the project will go ahead between January and March 2014.

2.4 Harbour Management System

2.4.1 Work is well advanced for the upgrading of the Harbour Management System to a web based system. The advantages of the improved system will include, but not be limited to:

- Electronic invoicing and payment system
- Customer access to view their account details
- Electronic point of sale afloat and ashore
- Merging the boat park system into the harbour system

3. LEGAL IMPLICATIONS

3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

4.1 There are no new financial implications as a result of this report.

5. Risk Assessment

5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
The Harbour Authority is striving to deliver an improving service to harbour users.	3	2	6	The Harbour Board, considers many routine issues annually, topical items will be brought to the Board as they arise. The objective being a better service in a safe environment for estuary users.

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers	The Pier & Harbour (Salcombe) Order Act 1954
Consideration of equality and human rights:	There are no equality or human rights issues with this report
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background Papers:	Strategic Business Plan 2nd Edition dated 26 March 2012.
Appendices attached:	

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AGENDA ITEM 10

SOUTH HAMS DISTRICT COUNCIL

AGENDA ITEM 10

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	8 April 2013
REPORT TITLE	MATTERS FOR FUTURE CONSIDERATION
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of Report

To identify matters for future consideration by the Harbour Board.

RECOMMENDATION

That the Harbour Board RESOLVES to note the report.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 The Harbour Board Constitution states that Matters for Future Consideration should be reviewed by the Board at each meeting.

2. MATTERS FOR FUTURE CONSIDERATION

2.1 Harbour Board Dates

2.1.1 The following dates have been set for Harbour Board Meetings:

- 20 May 2013
- 15 July 2013
- 23 September 2013

2.3 Performance Management

2.3.1 Reviewed quarterly with the report for the 4th quarter of financial year 2012/13 being presented on 20 May 2013.

2.4 Year End Budget Report 2011/12

2.4.1 To be presented to the Board in July Annually.

2.5 Revenue Budget and Review of Fees and Charges.

2.5.1 The annual revenue budget for the following financial year will normally be brought to the Harbour Board for consideration in September annually.

2.5.2 The Harbour fees and charges will be reviewed annually and brought to the Board for consideration directly after the Budget in September annually.

2.6 Harbour Board Annual Report

2.6.1 The Harbour Board Annual Report will be prepared for the Board Meeting on 15 July. The draft will be circulated in April/May, once the yearend financial figures have been finalised, for Board Members to comment.

2.7 Harbour Annual Inspection

2.7.1 To take place in July Annually. Next year's inspection will take place on the morning of 15 July 2013 before the scheduled Board Meeting.

2.8 Review of Trial use of fingers on Coad Cove pontoons

2.8.1 As part of a review of Deep Water Mooring Options The Harbour Board agreed to a trial use of fingers on the Coad Cove pontoons for vessels up to 8m during the 2013 Season (SH 27/12).

2.8.2 The aim of the finger berths for small vessels is to make full use of the deep water pontoon asset and free up some space in order to make some additional larger berths to get the mooring waiting list moving.

2.8.3 Four fingers were installed and allocated for the 2013 season on Coad Cove B Pontoon.

2.8.4 The Board will review the viability of this trial in September 2013.

2.9 Compliance with the Port Marine Safety Code

2.9.1 The Harbour is audited bi-annually by the designated person. A report of the Audit forms part of the agenda of this meeting.

2.9.2 The next inspection will be on 15 July 2013 to coincide with the Annual Inspection.

2.10 Long Term Security of Tenure

2.10.1 The Strategic Business Plan 2012-2017 set out within its key Strategic Objectives task 4.1 - To consider future boating trends

and provide suitable and appropriate facilities and Services through an annual Harbour Board Workshop.

2.10.2 The second Harbour Board annual workshop will be held on 30 October 2013.

2.11 Membership of the Harbour Board

2.11.1 This Board Meeting will be the final Board meeting for the following Co-opted Members, they having served two terms:

Mr Kit Harling CBE
Mr Hugh Marriage OBE
Mr Jonno Barrett
Mr Peter Waring

2.11.2 A recruitment process commenced in February with interviews programmed for 26 April 2013. The new Board Members will be proposed to Full Council on 9 May 2013 for confirmation.

3. LEGAL IMPLICATIONS

3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

4.1 There are no new financial implications as a result of this report; however this is not necessarily the case for the work which will follow.

5. Risk Assessment

5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
The Harbour Authority is striving to deliver an improving service to harbour users.	3	2	6	The Harbour Board, considers many routine issues annually, topical items will be brought to the Board as they arise. The objective being a better service in a safe environment for estuary users.

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers	The Pier & Harbour (Salcombe) Order Act 1954
Consideration of equality and human rights:	There are no equality or human rights issues with this report

Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background Papers:	Strategic Business Plan 2nd Edition dated 26 March 2012. Constitution of the Salcombe Harbour Board (as adopted by Council on 25 June 2009). Harbour Board Constitution (as adopted by Council on 25 June 2009). SH 27/12 – Review of Deep Water Moorings Options
Appendices attached:	None

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**MINUTES OF THE MEETING OF
THE SALCOMBE HARBOUR BOARD
HELD AT CLIFF HOUSE, SALCOMBE ON MONDAY, 8 APRIL, 2013**

Members in attendance			
* Denotes attendance		∅ Denotes apology for absence	
*	Cllr R J Carter (Chairman)	*	Mr J Barrett
∅	Cllr M J Hicks	*	Dr C C Harling (Vice Chairman)
∅	Cllr K R H Wingate	*	Mr M Mackley
*	Cllr S A E Wright	*	Mr H Marriage
		*	Mr A Thomson
*	Cllr P W Hitchins (in a non voting capacity)	*	Mr P Waring

Item No	Minute Ref No below refers	Officers in attendance and participating
All agenda items		Salcombe Harbour Master and Member Services Manager

SH.57/12 MINUTES

The minutes of the meeting of the Salcombe Harbour Board held on 4 February 2013 were confirmed as a correct record and signed by the Chairman.

SH.58/12 URGENT BUSINESS

The Chairman advised that there were no items of urgent business to bring forward at this meeting.

SH.59/12 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, and the following were made:

Cllr S A E Wright, Mr J Barrett, Dr K Harling, Mr M Mackley, Mr A Thomson and Mr P Waring all declared a disclosable pecuniary interest in all related agenda items by virtue of having moorings or paying harbour dues to the Council. As the Deputy Monitoring Officer had previously granted a dispensation under Paragraph 8.1 (c) of the Code of Conduct (minute SH.21/12 refers), all Members remained in the meeting and took part in the discussion and debate on all agenda items.

SH.60/12 PUBLIC QUESTION TIME

No members of the public were in attendance.

SH.61/12 FEEDBACK FROM HARBOUR COMMUNITY FORUMS

The Board received verbal update reports from the Board Members who attended the Harbour Community Forums, during which reference was made to:-

Salcombe Kingsbridge Estuary Association (SKEA)

There were no issues to raise.

Kingsbridge Estuary Boat Club (KEBC)

There were no issues to raise.

South Devon & Channel Shellfishermen

There were no issues to raise.

Kingsbridge and Salcombe Marine Business Forum

No meeting had been held, however, concerns had been raised verbally with the representative in relation to the recent decision on Moorings Facility Capability in which it was resolved that boats with an outboard motor left in the raised position should cover the propeller with a bucket.

SH.62/12

REVIEW OF BYELAWS ENFORCEMENT POLICY

The Harbour Master introduced a report which asked the Board to review the enforcement policy for Harbour byelaws. He also advised the Board of the Marine Navigation Bill (No. 2) which was due a third reading on 24 April 2013. This Bill would give all Harbour Authorities the opportunity to request powers of harbour direction from the DfT, which could replace Harbour byelaws. The Harbour Master expected a set of model directions to be forthcoming and was of the view that the Board should not rush into producing their own directions. However, one Board Member did note that the new harbour directions were likely to include a different level of fines than the existing byelaws and therefore steps should be taken to address this difference.

Minor amendments were suggested to the draft Enforcement Policy.

It was then:

RESOLVED

That the Enforcement Policy be adopted as set out at Appendix B to the presented report, subject to the minor amendments being incorporated as discussed at the meeting.

SH.63/12

TOPICAL HARBOUR ISSUES

The Board considered a report which set out a range of topical harbour issues that did not warrant a report in their own right. The Harbour Master introduced the report, and took Members through the key points. A date would be identified to enable an official opening of the Whitestrand Showers to take place. The Board were also advised of an expected delay to the Fish Quay project, although more specific details in relation to timings would be available after the next project meeting. Following a brief discussion, it was then:

RESOLVED

That the report be noted.

SH.64/12 **MATTERS FOR FUTURE CONSIDERATION**

The Board considered a report that identified matters for future consideration by the Harbour Board.

The Harbour Master introduced the report and highlighted the key points. He asked Members to note the future workshop date of 30 October 2013. He also advised the Board of complaints that had been received in relation to the Moorings Allocation Policy. He had sought legal clarification and this matter would be discussed again at a later Board meeting.

It was then:-

RESOLVED:

That the report be noted.

SH.65/12 **EXCLUSION OF PUBLIC AND PRESS**

It was then:-

RESOLVED

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business in order to avoid the likely disclosure to them of exempt information as defined in paragraphs 1 and 1 of Part 1 of Schedule 12A to the Act.”

SH.66/12 **COMMERCIAL VENTURE**

The Board was asked to consider a report relating to a commercial venture.

Following a discussion, it was then:

RESOLVED

That the report be noted.

(Meeting commenced at 2.30 pm and concluded at 3.45 pm).

Chairman

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