

Report to: **Salcombe Harbour Board**
Date: **19 October 2020**
Title: **Enforcement of Byelaws and Harbour Directions**
Portfolio Area: *Salcombe Harbour*

Wards Affected: **All South Hams**

Urgent Decision: **No** Approval and clearance obtained: **Y / N**

Date next steps can be taken: Recommendations will be considered at the Council meeting to be held on 17 December 2020.

Author: **Cameron Sims-Stirling** Role: **Harbour Master**

Contact: **Telephone: 01548 843791**
Email: Cameron.sims-stirling@swdevon.gov.uk

Recommendation:

The Harbour Board RECOMMENDS the Council to adopt the revised Enforcement Policy at Appendix 1, and AGREES to it being posted on the Harbour's website, prior to its formal consideration by Full Council.

1. Executive summary

It is a requirement of the Port Marine Safety Code that the Harbour Authority publishes an enforcement policy. The proposed draft at Appendix 1 is intended to bring the 2013 statement up-to-date and in line with developing practice.

2. Background

- 2.1 Salcombe Harbour Authority is a statutory harbour authority and has a duty to regulate navigation within its harbour. It also has powers to make byelaws to provide an enforceable legal framework that can be used to assist in regulation.
- 2.2 Byelaws provide general rules for navigation and the conduct of a vessel within the jurisdiction of a Harbour Authority. The Salcombe Harbour byelaws were last revised in 2008.
- 2.3 The Marine Navigation Act 2013 made additional provisions in relation to marine navigation and harbours. Salcombe Harbour Authority subsequently applied for and acquired the powers to make Harbour Directions, which were designed to complement, or to some extent replace, harbour byelaws. However, to date, no Harbour Directions have been made.
- 2.4 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.

- 2.5 The Harbour Authority last published its Enforcement Policy in April 2013 (SH 62/12); the proposal is to revise and update that policy. The impetus to this work has been given by the upgrading of the Harbour's website and therefore the need for a document with appropriate web links.
- 2.6 The proposed draft is not intended to signal a change in policy, merely to clarify and set out in more detail the actions which could be taken as the result of an infringement.

3. Issues for consideration

- 3.1 It is recommended that the Harbour Board agrees the Enforcement Policy at Appendix 1.
- 3.2 It is a requirement of the Port Marine Safety Code that the Harbour Authority publishes an enforcement policy. The background to the 2013 policy was concern about breaches of the byelaws, particularly speeding, and the possible need to bring a prosecution. It was important that the basis for a prosecution could not be undermined because a policy had not been published. This was, therefore, the emphasis of the 2013 policy.
- 3.3 The introduction of the possibility of Harbour Directions has occurred since 2013 and, although none have yet been issued, the enforcement policy should clearly cover that eventuality, so this is included in the proposed draft.
- 3.4 Harbour Masters have considerable powers but, in general, these apply to vessels rather than individuals. It follows that it is important for an enforcement policy to set out the actions which may be taken against individuals when there is a need to do so.
- 3.5 Although there have been several successful byelaw prosecutions, experience has shown that a number of infringements can be resolved by the Harbour Master without the need to go to court. However the current enforcement policy makes no reference to the measures which the Harbour Master might take. The proposed draft seeks to rectify this.
- 3.6 When considering serious incidents and possible infringements, the Harbour Board has been clear that the withdrawal of harbour facilities may be entirely proper in certain cases. The most obvious of these is the withdrawal of a mooring licence, which is specifically covered by the moorings policy. However, not all boat owners have a mooring and there is, therefore, a need to spell out a policy of potentially denying the use of any of the Harbour's facilities in such cases. This is rectified in the proposed draft.
- 3.7 The opportunity has also been taken to include specific mention of good practice arising from the experience of other harbours like, for instance, the need for training and the need to give notice of ascribing blame to a third party (para 6.2). Harbour Authority staff have recently been trained in conducting interviews in accordance with the Police and Criminal Evidence Act 1984.
- 3.8 In summary, the proposed draft is intended to clarify the enforcement policy, the legislation under which it operates and the options, including prosecution, which the Harbour Authority makes available to the Harbour Master, acting on its behalf, so that harbour users can be aware of what to expect in the event of an infringement. It is not its purpose to introduce any major changes in practice.

4. Consideration of risk

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 Byelaws or Harbour Directions	4	3	9	Regular review of and consistent enforcement of the published policy.
Harbour Byelaws or Harbour Directions will not be enforced in a consistent way.	3	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 Byelaws or Harbour Directions. The Enforcement Policy gives a framework and guidance to both officers and harbour users on the enforcement of Byelaws or Harbour Directions and the consequences of non-compliance.

5. Proposed Way Forward

5.1 The proposal is that the Harbour Board recommends the adoption of the revised enforcement policy.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36). Sec 40 of the Harbours Act 1964 as amended by the Marine Navigation Act 2013. Salcombe Harbour Byelaws 2008
Financial implications to include reference to value for money		None
Risk		The risks are set out in section 4 above
Supporting Corporate Strategy		Community Life Economy Environment
Climate Change - Carbon / Biodiversity Impact		None
Comprehensive Impact Assessment Implications		
Equality and		A person accused of contravening civil or criminal

Diversity		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.
Safeguarding		None
Community Safety, Crime and Disorder		A clarified enforcement policy should act to reduce infringements.
Health, Safety and Wellbeing		None
Other implications		

Supporting Information

Appendices:

Appendix 1: Enforcement of Byelaws and Harbour Directions

Background Papers:

None