

**SOUTH HAMS DISTRICT COUNCIL
SALCOMBE HARBOUR AUTHORITY**

ENFORCEMENT OF BYELAWS AND HARBOUR DIRECTIONS

1. Legislation covering the Harbour

1.1. South Hams District Council, in its capacity as the statutory Harbour Authority for the municipal port of Salcombe, has powers to make and enforce

1.1.1. [byelaws](#) under the [Pier and Harbour Order \(Salcombe\) Confirmation Act 1954](#); and

1.1.2. Harbour Directions under [sec 40 of the Harbours Act 1964](#), as amended by the Marine Navigation Act 2013.

1.2. Other byelaws and regulations affecting the Harbour are

1.2.1. byelaws relating to the Harbour's status as a [nature reserve](#); and

1.2.2. regulations in respect of [fishing in the Harbour](#), which are the responsibility of the [Devon and Severn Inshore Fisheries and Conservation Authority](#).

2. Availability of byelaws and Harbour Directions

2.1. A copy of the Salcombe Harbour byelaws is [available online](#), or on application to the Harbour Office in Whitestrand.

2.2. So far, no Harbour Directions have been made under the Harbours Act 1964.

2.3. This document is issued in accordance with the Harbour's [Port Marine Safety Code](#).

3. Penalties for not complying with byelaws or Harbour Directions

3.1. The Criminal Justice Act 1982 (as amended) provides for a [standard scale](#) of fines for summary offences which specifies the maximum fine which a court may impose. This is adjusted for inflation from time to time.

3.2. The current maximum fines are as follows:

3.2.1. for a breach of Harbour byelaws: a maximum fine at Level 2, which is £500; or at Level 3, which is £1000. The latest convictions include: misuse of distress flares within Salcombe Harbour limits which attracted a fine of £750 plus costs of £3075, and speeding within the Harbour Limits which attracted fines of £200 for each count plus £500 costs.

3.2.2. for a breach of a Harbour Direction, a maximum fine at Level 4, which is currently £2500.

4. Principles of Enforcement

4.1. The Harbour Authority recognises that most harbour users will wish to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

4.2. 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, and the proper management of the Harbour.

4.3. The principal purpose of enforcement action is to promote the safety of harbour users.

- 4.4. Where it appears that the Harbour byelaws or Harbour Directions may have been contravened, the Harbour Authority has the options of negotiation and education and, where an offence has occurred, of issuing a warning; suspending or withdrawing the use of Harbour facilities, as defined in para 9.1.2; or prosecution.
- 4.5. The Harbour Authority will seek to 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 offender's behaviour when considering action.
- 4.6. 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.
- 4.7. 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. The Harbour Authority is committed to assisting other enforcement agencies, including the Police, to pursue their statutory duties. It will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

5. Enforcement action

5.1. Enforcement action can take the form of

- **A warning**, which will be recorded, given by the Harbour Master.
- **A written warning**, given by the Harbour Master, explaining the way in which a byelaw or Harbour Direction has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records.
- **Sanctions initiated by the Harbour Master**. Following any breach of a byelaw or Harbour Direction, the Harbour Master may, on behalf of the Harbour Authority and having considered any written representations, suspend or withdraw the use of any Harbour facility.
- **Prosecution** – as an ultimate sanction.
- A combination of any of the above.

5.2. Any person may appeal to the Harbour Authority, through the Chairman of the Harbour Board, against any sanction, other than a prosecution, initiated by the Harbour Master. The Harbour Authority may choose to deal with the appeal through the [Council complaints procedure](#).

6. Consideration of action

6.1. Prosecution is a serious matter and must be regarded as the ultimate sanction. A prosecution will be initiated only when the alleged conduct is considered so serious that the Harbour Authority cannot impose an appropriate sanction.

6.2. When dealing with alleged offences

- Officers, who will have received appropriate training, will identify themselves and explain the purpose of their visit or interview.
- Each case will be considered on its individual merits and a prosecution will be initiated only in accordance with this policy.
- In cases where blame is being ascribed to a third party, details must be provided in writing to the Harbour Master at an early stage.
- 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 in accordance with 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's [National Policy Statement for Ports](#) and/or [Maritime and Coastguard Agency](#).

7. Enforcement considerations

7.1. In considering the appropriate enforcement action, the Harbour Authority will take into account

- The seriousness of the complaint;
- The risk of harm to the public and others;
- The public interest;
- The explanation of the offender;
- The behaviour of the offender;
- Whether the matter is a recurrence;
- Whether the alleged offence has resulted in any financial gain; and whether this can be mitigated;
- Whether there have been any other contraventions of byelaws 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 and reliability of witness accounts; and
- The sufficiency of evidence.

8. Prosecution

8.1. Prosecution, as an ultimate sanction will be considered in the following circumstances where;

- The alleged offence is a flagrant breach of byelaws 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 public interest factors indicating that prosecution is not appropriate.

8.2. The decision to prosecute will be taken by the Council solicitor in consultation with the Harbour Master and conduct of the matter will then remain with the solicitor until the court case has concluded.

8.3. Following a conviction, the Harbour Master may refer the case to the Harbour Board to consider whether the use of any Harbour facilities should be suspended or withdrawn.

8.4. In appropriate cases, following a conviction, the Harbour Authority will seek to recover the costs of enforcement action. Any award of costs will be for the court to determine.

9. Definitions

9.1. In this document:

9.1.1. "Harbour Master" means the Harbour Master or any person appointed to act for the Harbour Master.

9.1.2. "Harbour facility" means any service provided by the Harbour Authority including, for instance, acceptance of harbour dues; use of slipways and/or pontoons; granting of, or renewing, a mooring licence; maintenance of a mooring; and boat storage. Under the Harbour Authority's [Moorings Policy](#) mooring licences and contracts specifically require adherence to byelaws and Harbour Directions.

9.1.3. "Suspension" of a Harbour facility means withdrawing the facility for a specified period of time before it is reinstated.

9.1.4. "Withdrawal" of a Harbour facility means that the facility will be reinstated only after a fresh application has been made and accepted, and the application becomes sufficiently high in any waiting list.

CLlr Julian Brazil
Chairman, Salcombe Harbour Board

Date: July 2020