

AGENDA
ITEM

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SOUTH HAMS DISTRICT COUNCIL

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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:

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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