

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	REVIEW of BYELAWS ENFORCEMENT POLICY
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of report:

To review the enforcement policy for Harbour byelaws.

Financial implications:

There are no direct financial implications from this report. The DfT have indicated that there will be no charge for their conference of the powers of Harbour Directions as ports will be dealt with in batches.

RECOMMENDATIONS:

That the Harbour Board RESOLVES to:

1. Recommend the adoption of the Enforcement Policy at Appendix C to this report.
2. Recommend that Salcombe Harbour Authority apply to the DfT for the power to give harbour directions under sections 40A-0D of the Harbours Act 1964 as amended by the Marine navigation Act 2013.

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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 byelaws to provide an enforceable legal framework that can be used to assist in regulation.
- 1.2 Byelaws 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 The Harbour Authority published their latest edition of the Enforcement Policy in April 2013 (SH 62/12); this report instigates a review of that policy.
- 1.4 The Marine Navigation Act 2013, Appendix A, made provision in relation to marine navigation and harbours and provides Salcombe Harbour Authority with the opportunity to apply for the powers to make Harbour Directions.
- 1.5 The lead time to introduce a Harbour Direction would be months rather than years and within the control of the Harbour Authority and the Port User Group 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 was not so well received by the Royal Yachting Association (RYA). Consequently there have been long discussions resulting in supplementary guidance, a Code of Conduct on Harbour Directions, Appendix B.
- 1.6 Harbour Directions may complement or to some extent replace harbour byelaws.
- 1.7 The DfT have requested expressions of interest from ports interested in being designated with the powers to make harbour directions by 30 April 2014.

2. ISSUES FOR CONSIDERATION

- 2.1 It is recommended that the Harbour Board review the Enforcement Policy and re-issue it, draft at Appendix C

- 2.2 As part of the annual review of the Enforcement Policy the Byelaws should be reviewed. As a byelaw change could take several years, it is proposed that this review is conducted over the next 12 months in tandem with an application to the DfT for the powers to make Harbour Directions.
- 2.3 In preparation for an application for the powers to make Harbour Directions, the Harbour Authority consults with the Harbour Community Forums with a view of establishing a Port User Group (PUG), with membership from each of the pre-established Harbour Community Forums.
- 2.4 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 movement, mooring and unmooring, equipment and manning of ships. They are therefore unlikely to completely replace byelaws.
- 2.5 Potential Harbour Directions could include the following issues identified in the annual review of the Harbour's Risk Assessments:
- The Racing Dinghy Free Fairway to vessel traffic movements during race starts.
 - 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.

3. LEGAL IMPLICATIONS

- 3.1 The Salcombe Harbour Authority is the statutory body, and is South Hams District Council. The Salcombe Harbour Board is the Board of 10, which is a committee of Council. The Board is the Duty Holder for the Harbour Authority.
- 3.2 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.
- 3.3 The appended enforcement policy has been updated and accords with current legal requirements including the Human Rights Act.
- 3.4 A review of byelaws will be required to determine if any statutory provision of local application will be need to be amended or repealed.

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications from this report.

5. RISK MANAGEMENT

5.1 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 Byelaws	3	3	9	Regular review of and consistent Enforcement of the published policy.
Harbour Byelaws 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 Byelaws. The Enforcement Policy gives a framework and guidance to both offices and harbour users on the enforcement of byelaws and the consequences of non compliance.
Byelaws become out of date and do not address the current problems within the Harbour	3	2	6	Byelaws 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. Byelaw changes are extremely difficult to progress through the DfT and could take up to 2 years. The power of Harbour Directions offers a complementary power to aid port management.

6. 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 byelaws
Background papers:	Salcombe Harbour Byelaws Enforcement Policy dated April 2013 (SH 62/12) 2013 Port Marine Safety Code Audit Harbour Risk Assessments and safety management System, reviewed November 2013.
Appendices attached:	A. Marine Navigation act 2013. B. NDP Supplementary Guidance: Code of Conduct on Harbour Directions. C. Salcombe Harbour Enforcement Policy dated 3 February 2014.