



Department for Transport

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Dear Mr Arrow,

Thank you for your letter dated 21 January 2016 to the Secretary of State regarding the inquest touching the death of Darren Wakefield. In your letter you explain that the hulk of the *Guiding Star* remains in situ and that in your view it is a potential hazard. You suggest that the Department may want to consider whether current legislation for dealing with derelict (which we have taken to include abandoned or neglected vessels) vessels in harbours is fit for purpose. I'm sorry it has taken a little while to respond.

The Department has undertaken a review as to whether the current legislation relating to derelict vessels is fit for purpose. In carrying out the review we have identified the relevant legislation, consulted the Maritime and Coastguard Agency and sought the views of harbour masters through the United Kingdom Harbour Masters Association. The detail of our findings is outlined below. To summarise, our conclusion is that the existing primary legislation and common law duties do provide a sufficient legal framework for dealing with derelict vessels in harbours. However, we recognise that some of the legislation is old and can be difficult to interpret. We have therefore provided further guidance on this matter in the Department's Port Marine Safety Code and associated Guide to Good Practice, revised versions of which are to be published shortly.

Background

Nearly all harbours with significant commercial or recreational usage in the UK are managed by Statutory Harbour Authorities (referred to here as harbour authorities). There are several hundred harbour authorities in the UK. The powers and duties of each harbour authority including those to regulate users of the harbour are set out in its local legislation. This includes private Acts of Parliament and secondary legislation made under the Harbours Act 1964, known as Harbour Revision Orders and Harbour Empowerment Orders. The details of the legislation varies for each harbour authority reflecting the particular circumstances of the harbours. There are also a number of general public Acts of Parliament that are relevant to harbour authorities in carrying out their business.

The local legislation of many harbour authorities incorporate a number of standard provisions taken from the Harbours Docks and Piers Clauses Act 1847, (the 1847 Act). Clauses from this Act can be amended when incorporated in a harbour authority's local legislation to reflect its particular requirements.

Harbour authorities are independent bodies, they may be part of a private company, owned by local authorities or independent 'trust ports'. They are run on a commercial basis, earning revenues from charges levied on harbour users and other sources. They generally do not receive government funding in support of their activities.

The Department for Transport has responsibility for policy on maritime matters in the UK, including in relation to safety in harbours. The Maritime and Coastguard Agency (MCA) is an executive agency of DfT and works with strategic partners to promote and discharge the functions of the Secretary of State in relation to maritime safety, encouraging economic growth, and minimising the maritime sector's environmental impact.

An important role of the Department and MCA in relation to harbour authorities is the preparation and up-dating of the Port Marine Safety Code (PMSC) and associated Guide to Good Practice on Port Marine Operations. The PMSC applies to all harbour authorities. It is primarily intended for the duty holder in each authority who is directly responsible for safety of marine operations in the harbour waters and approaches.

Summary of the principal statutory powers

The principal legislation that covers these types of vessels are sections 52, 56 and 57 of the 1847 Act (as incorporated into local harbour legislation), section 252 of the Merchant Shipping Act 1995 (the 1995 Act), section 1 of the Dangerous Vessels Act 1985 (subject to certain limitations) and section 108A and Schedule 3A of the Merchant Shipping Act 1995. Some of these legislative powers rest with the harbour master or harbour authority; some rest with the Secretary of State. In response to our consultation, harbour masters also stated that they have provisions within their own local legislation and have also used alternative legislation in some cases to deal with problem vessels.

We have not been able to undertake a review of the individual local legislation as applicable to each harbour, and within which there may be considerable variations. For example, substantial parts of the 1847 Act (including sections 56 and 57) may be incorporated into local legislation, but additional or modified powers may also be included, including specific wreck removal powers.

More information about the principal statutory powers available to harbour masters and harbour authorities is in the annex.

Common law duties

In addition to statutory powers and duties, harbour authorities and their employees (including the harbour master) owe a duty of care under the common law to those who reasonably and foreseeably are within the harbour area.

Consultation responses

The responses received to our consultation with harbour masters showed that issues relating to derelict vessels do arise at harbours from time to time, although the position varied somewhat from harbour to harbour. For example, one harbour master said that

derelict vessels were a persistent and endemic problem, while another said there had been one case in the past 5 years. One harbour master said that the board has a standing agenda item to deal with abandoned and neglected vessels.

The responses revealed that harbour masters and harbour authorities utilise different legislative powers when dealing with abandoned and neglected vessels. Some rely on s252 of the 1995 Act; other harbour masters said they relied on clauses incorporated from the 1847 Act or other local harbour legislation. Some harbours indicated that they rely on both the 1847 and 1995 Acts. Others used powers in general legislation.

There were a range of views about the efficacy of the legislation used to deal with this issue. There were concerns about the practicalities of dealing with derelict vessels including costs incurred by harbour authorities. A number also mentioned the risk of legal challenge from the owner of a vessel.

Conclusion

On the basis of our review, our conclusion is that the existing primary legislation and common law duties provide a sufficient legal framework for the purposes of dealing with derelict vessels. In our consideration of the legislative provisions, we have also noted that although the legislation is generally expressed in permissive (discretionary) terms, the powers granted to a harbour by Parliament are in almost all cases conferred for the purpose of providing a public service and may by implication impose a duty to take action where there is a threat to life. Where harbour masters are uncertain of their powers it is expected that they will seek appropriate legal advice.

In terms of the 1847 Act, we recognise that because it is old and contains outdated drafting, it can be difficult to interpret, and as a result harbour masters can be cautious about using it for fear of legal challenge. In some cases we understand that the financial implications of dealing with an abandoned or neglected vessel, and the lack of value of such vessels, resulting in an inability for harbours to recover their costs fully, can lead to a cautious approach by harbour masters and authorities. However, from a legal standpoint in such circumstances we consider that safety should be the key consideration for harbour authorities.

The Department has prepared advice to clarify for harbour authorities and harbour masters their various responsibilities and powers relating to abandoned vessels for inclusion in the PMSC and the accompanying Guide to Good Practice, which is due to be reissued shortly. Also, to highlight the importance of good communication between harbour masters and the harbour authority board to enable effective use of their statutory powers, some guidance on this will be included within the good governance guidance for ports when this is updated later in 2016.

Yours sincerely




Deputy Director, Maritime Commerce and Infrastructure