



SEMAPHORE

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Are Harbourmasters' Standing Directions Lawful?

Are harbourmasters' "standing directions" lawful? – it is a conundrum which John Burton and Bevan Marten of Izard Weston posed to conference delegates, attacking the question from both a "yes" and "no" perspective.

It is a question which remains unresolved and while one body of opinion suggests there is enough statutory leeway for harbourmasters to issue such general instructions, there is also case law which suggests harbourmasters should rely only on specific instructions to specific vessels.

Section 33E of the Maritime Transport Act 1994 sets out the functions of harbourmasters with the statement: "A harbourmaster may exercise the powers and perform the duties conferred by this Act or any other enactment for the purpose of ensuring maritime safety in relation to the ports, harbours, or waters for which he or she has been appointed as a harbourmaster by the regional council."

Bevan said a growing trend is for harbourmasters to believe they have the scope to apply general navigational directions. In some cases, ports have adopted this practice. Examples are the Port Taranaki Harbour Master's General Directions (2015), the Auckland Council, Navigation Safety Operating Requirements (2016), and the Environment Canterbury, Harbourmaster's Direction (2016).

Other ports, however, have rejected the idea of standing directions.

Mr Marten said there are pros and cons to each point of view. He pointed to the Maritime Transport Act 1994 Section 33F on harbourmasters' general powers, which states:

- (1) For the purposes of ensuring maritime safety, or enforcing navigation bylaws or regulations and rules made under this Act relating to maritime safety, a harbourmaster may, in relation to the areas for which he or she has been appointed as a harbourmaster by the regional council, – [...]
- (c) give directions regarding –
 - (i) the time and manner in which ships may enter into, depart from, lie in, or navigate waters within the region
 - (ii) the position, mooring, unmooring, placing, removing, securing, or unsecuring of ships
 - (iii) the manner in which ships may take in or discharge cargo
 - (iv) the manner in which cargo is secured or handled on a ship if there is a risk of cargo falling overboard or becoming a hazard to navigation
- (d) direct the master of any ship to –
 - (i) weigh anchor; or
 - (ii) moor, unmoor, anchor, secure, unsecure, place, or move the ship
- (e) cause a ship to be moored, unmoored, anchored, secured, unsecured, placed, or removed, or to weigh anchor: [...]

Mr Marten said this section allowed harbourmasters to give a broad direction to mariners by way of standing directions.

The Guelder Rose (1927, EWCA)

Harbourmaster's powers "are given to him for the purpose of giving **specific directions to specific ships for specific movements**. Those are powers which must be exercised in the circumstances sometimes at once, or on an emergency in respect of which the procedure as to bylaws would be quite unreasonable and useless".

Standing directions are "more in their nature bylaws than directions".



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The Guelder Rose case emphasised the importance of specific instructions as opposed to standing orders

Mr Burton duly argued the opposite viewpoint, that specific directions are required. He quoted the case of *The Guelder Rose (1927, EWCA)*, which said a harbourmaster's powers "are given to him for the purpose of giving specific directions to specific ships for specific movements. Those are powers which must be exercised in the circumstances sometimes at once, or on an emergency in respect of which the procedure as to bylaws would be quite unreasonable and useless".

Standing directions are "more in their nature bylaws than directions". Subsequent cases to reinforce this point are *MacDonald v Mackenzie (1947)* (Scotland); *Pearn v Sargent (1973)* (England); and *Moyne, Thompson and McCauley Bros v Londonderry Port and Harbour Commissioners (1986)* (Ireland).

The presenters highlighted notices issued by Port Taranaki, the Auckland harbourmaster and Environment Canterbury to underline the approaches taken by different New Zealand ports.

Mr Burton added the viewpoint that if an incident occurred when a ship was following standing direction, it would probably end up before the courts. Regional councils and harbourmasters have no limit on their liability and therefore it could be costly if a case arises as a result of a ship following a standing order which is then proven to be unlawful.

The presenters left the question open for delegates to ponder.

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