

GENERAL CONDITIONS / RULES / REGULATIONS OF BERTHING / MOORING

NORTH BERWICK WEST BAY MOORINGS ASSOCIATION

**The Harbour
North Berwick**

GENERAL CONDITIONS/RULES/REGULATIONS OF BERTHING/MOORING

For the purpose of these conditions:

- a) "Master" shall include owners, charterers, licensees, any authorised agent of the Master or other person for the time being lawfully in charge of the vessel.
- b) "Berth" shall include a mooring trot or any other facility provided by the Association.
- c) "Association" is the North Berwick West Bay Moorings Association as recognised by the Crown Estate Commissioners.
- d) "Constitution" should be read in association with the Minutes of Agreement between the Crown Estate Commissioners and the North Berwick West Bay Moorings Association - dated 10th January, 1992 and any amendments thereafter.

1. GENERAL

- 1.1** The area of sea bed that comprises the Association's jurisdiction is the area as leased from the Crown Estate Commissioners (edged in pink on the plan annexed and signed in the Minutes of Agreement between the Crown Estate Commissioners and the Association).
- 1.2** The berthing of any vessel in the Association area shall amount to acceptance of these conditions and of payment of all charges in respect thereof.
- 1.3** Masters will be responsible for the conduct of and fully accountable for any loss, injury or damage, or nuisance caused or committed by the crew members, agents or guests while within the Association's area.
- 1.4** (a) The Association shall not be liable for any loss, theft, or any other damage of whatever nature, caused to any vessel or other property of the Master or others claiming through the Master.

(b)/

(b) The Master shall indemnify the Association against all loss, damage, costs, claims or proceedings incurred by, or instituted against the Association or their servants or agents which may be caused by the Master's vessel or by the Master, his servants, agents, crews, guests, or subcontractors.

(c) The Master shall insure his vessel adequately against loss or damage howsoever caused and shall maintain third party insurance in respect of himself and or his vessel, or his crew for the time being, and his agents, visitors, guests and sub-contractors in the sum of not less than £5,000,000 in respect of each accident or damage and in respect of each vessel adequate salvage insurance. Such insurance shall be effected and maintained in an insurance office of repute and the Master shall produce the policy or policies relating thereto to the Association on demand.

(d) The Master shall bind himself to indemnify the Association and their successors from and against all action, proceedings, claims, demands, costs and expenses in consequence of the exercise by the Master of the right to moor hereby granted or of any fault or defect in the said moorings/ground chain/anchors and associated Association's gear.

(e) The Masters agree that the moorings specification (including risers) have been drawn up following expert advice and the Association Committee have relied upon such outside advice in the installation of the ground gear etc.

(f) The Masters accept that the vessel occupying the moorings as specified in the Bay are exposed to weather from the North to the Southeast and as such the Masters occupying the moorings at their own risk and their vessels are not covered by Association insurance.

(g) The Masters are recommended to advise their insurers of the specification of the moorings, the layout and geographic location, indicating the direction from which the Bay is exposed.

(h) The Masters agree that the main ground chains / risers / pick up chains / buoys have been designed under expert advice to provide acceptable security for summer conditions only and are not recommended for winter use.

- 1.5** Unless he has the Association's prior consent, the Master shall not lend or transfer the berth (the mooring permission being personal to the Master relating to a particular vessel and non-assignable) nor shall he use the berth for any other vessel. The moorings are for the use of the individual to whom the mooring has been allocated and must be used by such individual for the vessel nominated or its replacement, provided such replacement is approved by the Association as being suitable for the mooring allocated. Moorings may not be hired out or used by third parties for the mooring of other vessels.

- 1.6** Nothing in the Association's permission to moor shall entitle a Master to the exclusive use of a particular berth. The Association reserve the right to allocate berths according to availability, length and type of vessel. The Association will in re-allocation take note of the condition of the riser chains/buoys/pick up chains of that Master.
- 1.7** The vessel shall be berthed or moored by the Master in such a manner and position as the Association may require and the necessary warps and fenders shall be provided by the Master.
- 1.8** Vessels must not be used for permanent residential purposes.
- 1.9** All vessels afloat are to be maintained in a seaworthy condition.
- 1.10** The Association have the right to exercise a general lien upon any vessel and/or other property belonging to the Master of the vessel whilst in or upon the Association's moorings, until such times as any money due to the Association in respect of the vessel and/or other property on account of berthing charges/work done or otherwise shall be paid.
- 1.11** (a) The Association shall have the right (without prejudice to any other rights in respect of breaches of these conditions by the Master) to terminate the permission granted to the Master in the following manner in the event of any breach by the Master of these conditions or of any failure by the Master to make payment due to the Association. If the breach is capable of remedy or the Master has failed to make any such payment the Association may serve notice on the Master specifying the breach or the failure to pay and requiring him to remedy the breach or pay the amount due within 14 days. If the Master fails to remedy such breach or pay the amount due within 14 days, or if the breach is not capable of remedy, the Association may serve notice on the Master specifying the breach or failure to pay (where not already specified) and requiring him to remove the vessel within 28 days, at the expiration of which the Master shall remove the vessel from the Association's area of jurisdiction.

The Association shall refund to the Master the unexpired portion of the Debenture plus yearly maintenance fee only if the mooring can be transferable and further subject to a right of set off in respect of any damage suffered by the Association and/or other monies owing as a result of any of the matters giving the Association the right to terminate the permission.

(b) When no date of termination has been agreed in writing between the parties, the Association or the Master may terminate the permission granted to the Master by giving the other 28 days notice of such termination, at the expiration of which the Master shall remove the vessel from the Association's area of jurisdiction.

(c)/

(c) If the Master fails to remove the vessel on termination of the licence (whether under this condition or otherwise), the Association shall be entitled:

- i. To charge the Master with the annual maintenance fees which would have been payable by the Master to the Association if the permission had not been terminated for the period between termination of the permission and removal of the vessel from the Association's area of jurisdiction and/or
- ii. At the Master's risk, to remove the vessel from the Association's area of jurisdiction and thereupon secure it elsewhere and charge the Master with all costs arising out of such removal including alternative berthing fees.

1.12 In all cases where a permission to occupy a mooring berth may be lawfully terminated by notice, the same shall be deemed to be lawfully served if served personally on the Master or sent by Registered Post or Recorded Delivery Service to the last known address in the United Kingdom of the Master.

1.13 Any obligation of the Association towards vessels left at the mooring berth ends upon the expiry or lawful termination of the grant to the Master of the mooring facilities in respect of such vessels, and the Association accepts no responsibility for loss or damage to any vessels or other property left at a mooring berth without the Association's consent.

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1.14 When a waiting list for moorings exists, any mooring which is not used by the debenture holder for their own vessel for a period of two seasons can be re-possessioned by the Association and offered to members on the waiting list. The debenture holder will be reimbursed in accordance with these rules.

1.15 Should a debenture holder not wish or be unable to make use of a mooring for their own vessel for a period of up to a season, then it can be offered back to the Association for temporary loan to the next person on the waiting list. The debenture owner continues to have full responsibility to maintain the integrity of the riser chain and its connection to the ground tackle.

1.16 It is for the debenture holder to agree with the temporary tenant any financial terms involved. Other than granting permission for this to take place and nominating a person as a temporary tenant, the Association has no responsibility for any aspect of this temporary arrangement; for example should the riser chain fail.

2. SAFETY

- 2.1** All persons visiting or using any part of the Association's equipment or within the Association's area of jurisdiction for whatever purpose do so at their own risk.
- 2.2/**
2.2 All vessels must be equipped with adequate fire fighting equipment as recommended by the Royal Yachting Association and the Department of Trade and Industry or as required by law.
- 2.3** Petrol and other inflammable substances shall not be stored on a vessel except in a receptacle specifically constructed for such purposes.
- 2.4.** The Association shall have the right to moor, re-berth, board, enter or carry out any emergency work on a vessel, if in the Association's opinion such be necessary for the safety of the vessel or the safety and/or convenience of the other mooring berth owners, or for the safety of the Association's ground chains, and the Master shall pay the Association reasonable charges for such work.

3. POLLUTION

- 3.1** Refuse, galley waste, effluent and sewage must not be discharged into the Association's area of jurisdiction. Toilets not connected to a sewage holding tank must not be used.
- 3.2** Oil, fuel or foul bilge water must not be discharged into the area of the Association's jurisdiction.
- 3.3** The West Bay at North Berwick is subject to the Control of Pollution 1974, the Dumping at Sea Act 1974 and the Prevention of Oil Pollution Act 1971. Masters and users of the Association's area of jurisdiction will be accountable in full of any breach of these Acts.

4. NUISANCE

- 4.1** Noisy, noxious or objectionable engines, radios, or other apparatus or machinery shall not be operated within the Association's area of jurisdiction so as to cause any nuisance or annoyance to the Association, to any other users of the Association's area of jurisdiction or any person residing in the vicinity. Every effort must be made to minimise noise from halyards and rigging.

5. OBSTRUCTION

- 5.1 Tenders may not be left in the water when not in use but must be stored aboard the parent vessel.
- 5.2 Vessels must be moored in such a way as not to overhang or obstruct other berth moorings.

6. DEBENTURE SCHEME

6.1 Purpose

The purpose of the debenture scheme is to provide finance for the purchase of chain, anchors, etc and the laying of the moorings in the Association's area of jurisdiction.

6.2 Transferability

Debentures cannot be transferred or sold to third parties and should a Master wish to surrender a debenture on vacation of the mooring allocated, such debenture can be surrendered only to the Association who in turn will be required to purchase the debenture only if it has a potential subscriber for the repurchase of the surrendered debenture.

6.3 Replacement of Chain/Attachments

It is anticipated that the moorings to be laid will have a working life of 10/15 years, before replacement, and it is proposed therefore that the cost of such moorings, be written off over such period as annual inspection dictates. The amount written off each year will be charged to the Income and Expenditure Account which is intended to be kept in surplus each year. The amount written off each year will be deposited in a separate bank account or separately identified in the Association's bank account with a view to generating funds for the replacement of chain and equipment as it becomes necessary.

6.4 Surrender Value of Debentures

Debentures can be surrendered only to the Association who will repurchase only in the event that such debenture can be reissued. In any year, debentures will be valued based upon the most recent balance sheet value (adjusted upwards or downwards as necessary) and it follows, therefore, that the surrendered debenture will have a value which could be more or less than the face value of the debenture in year one. Provided the Association have a purchaser at such a balance sheet value, then this will be the price paid for the surrendered debenture.

7. ANNUAL COSTS/

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- 7.1** The mooring trots are designed to provide 14 individual moorings, not all of which will be occupied in an active mode at any one time.
- 7.2** Debenture holders are required to pay on an equal share of the annual costs of maintaining the moorings including administration costs, depreciation fund charges and Crown Commissioner's charges at the Association's share value. Except as defined in 7.3 below.
- 7.3** Debenture holders who have surrendered their debentures to the Association for disposal will not be charged for the season (summer or winter as appropriate) provided the debenture is surrendered to the Association at least one calendar month prior to the commencement of the season. For the purpose of this clause summer season dates are assumed at 15th April to 15th October inclusive with winter dates the reverse.
- 7.4** The Committee of the Association will estimate costs for the coming season and debenture holders (subject to 7.3 above) will be charged accordingly with payment due from the debenture holders within 2 weeks of the date of the notice of charge. If required the Committee of the Association may levy supplementary charges if actual costs are seen to exceed the original estimates during that year.
- 7.5** Debenture holders who surrender their debentures to the Association during a season may be entitled to a pro rata refund of the annual charge at the sole discretion of the Committee of the Association.

NORTH BERWICK WEST BAY MOORINGS ASSOCIATION

1st July, 1991

(up-dated January, 1992)

(up-dated July, 2022)

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