



# Brightlingsea Harbour Commissioners

## **HARBOUR TERMS AND CONDITIONS OF BUSINESS AND MOORING 2022/2023**

- 1) The 'Commissioners' means the Brightlingsea Harbour Commissioners, their servants and agents. The Owner means any person or organisation or company incorporated under the Companies Act who contracts with the Commissioners for the hire, use or licence to occupy any mooring berth, storage space, property, or facilities or whose vessel enters Brightlingsea Harbour.
- 2) All harbour users must comply with the International Regulations for the Prevention of Collisions at Sea, UK law, local authority Bylaws, River Colne Bylaws and the Commissioners' Byelaws. The Commissioner's Bylaws can be inspected at the Harbour Office. A proven breach by an Owner, or his Representative, or an Associate, of the Commissioners' Byelaws or those of Colchester Borough Council and Tendring District Council for which the Commissioners have been given the responsibility for enforcement will be considered grounds for the termination of any contract between the Commissioners and the Owner.
- 3) The directions of the Harbour Master and Harbour staff will be complied with.
- 4) All vessels entering Brightlingsea Harbour shall be liable to pay the Harbour dues and other fees and charges set out in the published schedule of charges available in the Harbour Office and on the Harbour website [www.brightlingseaharbour.org](http://www.brightlingseaharbour.org). All such dues shall be recoverable from the Owner, Charterer or Master of such vessel or their Authorised Agent who shall be bound by such charges and shall be deemed to have entered Brightlingsea Harbour with full knowledge and in acceptance of the terms conditions and charges set out herein. No variation of the same shall be binding on the Commissioners unless they accept such variation in writing.
- 5) In so far as the powers conferred upon the Commissioners by S.26 Harbours Act 1964 and the provision of navigational facilities are concerned the Commissioners shall not be liable for any loss damage or injury to any person vessel or cargo whatsoever unless it shall be proved that such loss damage or injury was caused by any willful act or neglect on the part of the Commissioners their servants or agents and in any event the Commissioners shall be entitled so far as the same is permitted by law to limit their liability in respect of such loss damage or injury.
- 6) Any vessel using the harbour is to be insured for recovery and removal from the harbour in the event of sinking and carry at least £2m (BODs & dinghies £1m) third party cover for damage caused by themselves, their vessel or their crew. It is for the Owner to ensure their vessel is adequately insured.
- 7) Repair or other work may be carried out on vessels in the Harbour. The Commissioners reserve the right to prevent the work being carried out if they consider that the work is being carried out in a dangerous manner or for any other reason it is undesirable that it should proceed.
- 8) In all cases where a contract between the Commissioners and the Owner may be terminated by notice, the same shall be deemed to be served if served personally or sent by registered post or recorded delivery service to the last known address in the United Kingdom of the Owner.
- 9) The Commissioners' fees will be demanded by invoice or by the Harbour Master or his/her staff. Where demanded by invoice the fees will be those ruling at date of contract and payment is to be made within 30 days from the date of invoice. Where demanded by the Harbour Master or his/her staff the fees will be those ruling at the date of demand and payment is to be made on demand.
  - 9.1) Annual or seasonal mooring invoices not paid by 14<sup>th</sup> April 2022, may result in cancellation of your mooring and reallocation to another on the waiting list.
- 10) All invoices or demands not paid within 30 days shall bear interest at the maximum rate permitted by Government legislation.



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- 11) Subject to any agreement to the contrary the Commissioners shall have a lien upon any vessel gear or cargo for the time being at any of their moorings or in Brightlingsea Harbour or in their possession for any sum due to them in respect of such vessel, cargo or gear.
- 12) Acceptance by the Commissioners of vessels and their engines or gear for mooring or storage is subject to the Torts (Interference with Goods) Act 1977 which confers on the Commissioners as bailees a right of sale exercisable in certain circumstances. Such sale will not take place until the Commissioners have given notice to the Owner or taken reasonable steps to do so in accordance with the Act. For the purposes of the Act it is hereby recorded that the Commissioners' obligation as custodians of vessels their engines or gear accepted for mooring or storage ends upon the expiry or lawful termination of the contract between the Commissioners and the Owner.
- 13) The Commissioners' staff have a right to work without being subject to verbal or physical abuse. Any such act by an Owner or his Representative or an Associate will be considered grounds for the termination of any contract between the Commissioners and the Owner.
- 14) Brightlingsea Harbour Commissioners do business and supply services in accordance with these Terms and Conditions of Business. All orders for goods and services are accepted by us on these Terms and Conditions. The Commissioners deem that these Terms and Conditions have been accepted by any vessel that enters the harbour, or by the payment of berthing and other fees, or by the acceptance of any instruction or offer (in writing or verbally) from BHC staff. No variation of these Terms will be accepted unless agreed in writing by an authorised person of Brightlingsea Harbour Commissioners.
- 15) Animals may only be brought into the Harbour provided that they are at all times kept under the control of OWNER and dogs are to be kept on a leash and do not cause inconvenience in the form of noise, fouling of pontoons or the communal areas or otherwise. Animals insofar as is reasonably practical shall be kept aboard the Boat at all times. Strict regulations exist for the control of rabies and BHC reserves the right to require the OWNER to remove any animal from the Harbour without prior notice. No animal which has been taken abroad shall be brought into or landed in the Harbour without the prior written consent of BHC. BHC reserves the right to report any suspected breach of this clause to the appropriate authorities.

## **Maintenance Posts and Town Hard**

- 16) Use of the maintenance posts and the Town Hard is conditional on the payment of the published fees. The Commissioners' do not accept any liability for damage to craft, persons or equipment whilst using the maintenance posts and Town Hard. The vessel must carry third party cover of at least £2m.

## **Mooring provision**

- 17) The Commissioners shall be under no obligation to provide mooring or berthing facilities. In the event they do so any such facilities, whether granted in writing or agreed in any other manner, shall be provided only on the following terms and conditions. No person, persons or organisation shall take up such mooring facilities, berthing or storage facilities without entering into a prior agreement with the Commissioners, but in the event any person persons or organisation shall do so he or they shall be deemed to do so with full knowledge and acceptance of the terms and conditions herein set out.
- 18) In so far as the provision of mooring and berthing facilities is concerned, except as expressly stated herein, all warranties conditions and representations expressed or implied statutory or otherwise are (to the extent that they may in Law be executed) hereby excluded. The Commissioners shall not be liable in contract or otherwise for any loss damage expense or injury arising out of or in connection with the use of the Commissioners' mooring, berths, storage space, property or facilities for whatever purpose provided always that the Commissioners shall accept



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- (i) liability in respect of death or injury arising out of the Commissioners' negligence
- (ii) such liability in respect of other loss or damage arising out of the Commissioners' negligence or breach of contract as may in the circumstances be unreasonable to exclude.

- 19) If you cancel your mooring a refund will not be given. Any changes to mooring arrangements requested by an owner during the period of contract will be subject to an administration charge.
- 20) The Commissioners reserve the right to re-allocate a mooring on a temporary basis when a boat owner is not in occupation.
- 21) The Mooring Holder shall indemnify the Commissioners against any claim or claims arising from the use of the mooring or vessel. Mooring holder are required to take out third party risk and wreck removal cover for at least £2M and it is strongly recommended that you insure your vessel for all risks.
- 22) The mooring holder shall at all times ensure that the craft is left in a seaman like manner and shall not cause a nuisance or annoyance to other users of the moorings. If Harbour staff have to intervene mooring owners will be charged for standard Harbour services and labour rates.
- 23) The mooring holder shall be responsible for the vessel being left clear sided when unattended.
- 24) The Commissioners reserve the right to permit other vessels to use unoccupied berths and to permit other vessels to lay alongside resident vessels.
- 25) The Commissioners reserve the right to move or relocate any vessel and /or gear at their discretion.
- 26) The Commissioners reserve the right to re-allocate a mooring on a temporary basis when a berth is not in occupation
- 27) The Commissioners do not guarantee sole occupancy of any mooring
- 28) The mooring may not be transferred or assigned to another person upon sale of craft or sublet.
- 29) Where vessels are moored alongside each other the Owners are mutually responsible to each other to properly make fast their vessels and not in any way to damage or obstruct neighboring vessels.
- 30) Dinghies, paddleboards, boat and fishing equipment shall not be left on pontoon walkways. Dinghies should not be left on berths unless the crew are on board. Dinghies shall be left in such a way as to avoid damage or inconvenience to other craft and to minimize obstruction to berths.
- 31) Pontoon furniture can only be added by agreement with the Harbour Master. Chains or shackles must not be used on pontoon cleats.
- 32) The Commissioners may, at their sole discretion, grant a mooring holder a 'sabbatical' for up to 1 year. If granted the vessel must not be kept on the mooring, no fees are due and the Commissioners may allocate the mooring to another user. At the end of the sabbatical, the mooring holder may apply for the next available suitable mooring.
- 33) Absence from berth. Mooring holders must inform the Harbour Office when absent from their berth. They should also advise for their return to ensure the mooring is free.
- 34) The Commissioners may revoke any mooring agreement without notice if the mooring holder fails to observe any of the above conditions and may revoke or suspend at any time by notice. The mooring holder may terminate the agreement by giving the Commissioners notice in writing. Any fees and dues already paid will be retained by the Commissioners.
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36) Vessel Length. From time to time harbour staff will carry out spot checks to ascertain the length of a vessel. The LOA will be deemed to include the bow sprit, davits, bathing platforms. The mooring fee calculation is LOA x per metre. If the difference is greater than the LOA written on the application form the mooring holder will incur the extra charge to cover the difference in length and an administration fee as detailed in Schedule of Charges.

## **Allocation List**

35) Applications are accepted for the vessel stated in the application. Applications will not be accepted for an individual, if a craft is not stipulated, the application will not be placed on to the allocation list. The Harbour will review the application and if the application is accepted will hold the application on the list until a suitable berth can be offered. If the vessel is not deemed suitable the harbour will inform the applicant. If an applicant changes their vessel whilst on the allocation list, it is their responsibility to inform the Harbour of the vessel change. The Harbour will review the revised application and confirm if the vessel is suitable to go onto the allocations list.

35a) Applicants are responsible for confirming annually in the month of December the details of the application are still correct and they still wish to be considered should a suitable mooring become available.

36) Mooring allocations are made from the list of applications, based on the compatibility of the vessel to the moorings available. Factors given consideration will include but not limited to: Manageability, Draft, Beam, required level of usage, tidal access required, vessel propulsion and how the vessel sits to wind and tide.

37) If a mooring offer is refused, the applicant may remain on the applications list. However, if a second offer is made by the harbour 12 months after the initial offer and this is refused the application will be removed from the allocations list and a new application will be required.

38) Fore and aft moorings are offered, if available, to craft below 26ft (7.9m), vessels exceeding this length will require special consideration based on the specific position of the mooring available. Fore and aft mooring allocations are based on the vessel being moored in accordance with the fore and aft mooring guidelines issued by the harbour. Vessels not moored in the prescribed manner will be asked to comply with the guidelines. Vessels which cause an obstruction to the fairway or a danger to safe navigation due to not mooring in the prescribed manner will initially be moored correctly by the harbour at the owner's cost if issues still continue to arise, they will be asked to vacate the mooring.

## **Sales of Vessels**

39) In the event of a private sale, BHC must be notified of the name and address of the purchaser. The mooring may not be transferred or assigned to another person. You will not receive a refund for unused mooring time. The new owner will be invited to join the mooring waiting list.

40) The Commissioners shall be under no obligation to provide mooring or berthing facility to owners who have exchanged their vessel for a larger one. Owners considering an exchange should immediately consult with the harbour office to agree a way forward.



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## **Annual Pontoon Payment Instalment Contract**

40.1) Standing order payments are only available to Harbour annual pontoon mooring holders and are agreed upon by the Harbour Master. The Harbour Master reserves the right to refuse standing order payments requested by Harbour pontoon annual mooring holders.

40.2) Commissioners' fee will be demanded by invoice. Where demanded by invoice the fees will be those ruling at date of contract. If the standing order payment plan runs from 1<sup>st</sup> April to 31<sup>st</sup> March, the first initial payment is made before April 14<sup>th</sup>. The owner of the vessel is then obliged to set up a standing order making a further fixed 11 payments by the 1<sup>st</sup> of each month.

40.3) BHC will not be issuing reminders. It is upon the mooring holder to keep to the agreed payment plan schedule.

40.4) If any payment is missed throughout the year BHC reserves the right to cancel your standing order payment plan and mooring contract. The vessel will be removed from the Harbour and the owner of the vessel will be liable for towing charges and you will be liable to pay any outstanding mooring fees in full.

40.5) If the debt is settled in full the vessel can return to the Harbour.

40.6) If the breach of contract persists BHC reserves the right to become a 'bailee' of the boat under the Torts (Interference with Goods) Act 1977. The sale of the vessel will be used to offset any outstanding debts.

40.7) Once the payment plan has been agreed if the mooring holder changes from summer to annual mid season then BHC will use the summer pontoon mooring rate plus 9%. The mooring holder will also incur a cancellation charge as stated in our Schedule of Charges.