
RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

1. DEFINITIONS

"LPHC" means the Londonderry Port & Harbour Commissioners a corporate body whose principal office is situated at Port Road, Lisahally, Londonderry BT47 6FL, trading as Foyle Port, and/or its agents, to whom the application for berthing is made, and shall include their successors.

"Byelaws" means the Londonderry Port & Harbour Commissioners Byelaws 2005 (as may be amended or reissued from time to time) a copy of which is available from the LPHC upon request.

"General Terms & Conditions" means the LPHC's General Terms & Conditions as may be varied from time to time by the LPHC.

"Harbour" means the harbour as defined by Article 6 of the Londonderry Port & Harbour Commissioners Order 1971, and includes all the facilities contained therein

"Harbour Master" has the meaning ascribed to it in the Byelaws.

"Marina" means Foyle Port Marina, including the pontoons, access bridge, services and all plant and equipment fitted or placed thereon by the LPHC, and any yacht moorings or any other facility for berthing a yacht or motorboat.

The "Regulations" means these Rules and Conditions relating to the use of the Marina.

"Vessel" means any vessel, craft, boat, yacht, dinghy or other marine structure which is the property of or is in the control of the Owner.

"Owner" means any person (other than the LPHC) lawfully in charge of or in control of any Vessel, vehicle or property including any charterer, hirer, master, agent or registered or beneficial owner.

2. PROVISION OF MOORINGS

The LPHC shall be under no obligation to provide berthing facilities, but in the event it does, such facilities shall be granted on the following terms and conditions.

3. BERTH RENTAL AND HARBOUR DUES

Berths may be rented for the periods and rates published from time to time by the LPHC. The LPHC reserve the right to increase rates during any licence period (annual increases are usually applied on and as from 1 April). Where a berth rental charge is calculated with reference to the overall length of the Vessel, the length will include extensions such as davits, bowsprits, etc. and will be rounded to the nearest whole metre.

In the case of an Owner renting a berth on an annual basis the berthing year will be the period of twelve months commencing on 1 April and rental charges will be payable in advance and demanded by invoice. Payment is due to be received within 28 days from the invoice date.

If the Owner fails to pay any sum due by it to the LPHC, the Owner shall be liable to pay interest to the LPHC on such sum from the due date, for the period from that due date to the date of payment at 4 per cent per annum above the base lending rate of Northern Bank.

Subject to all applicable laws and regulations, the LPHC has the right to exercise a general lien upon any Vessel and/or any gear and equipment whilst in the Marina or Harbour until all

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

monies due to the LPHC in respect of the Vessel have been paid. The LPHC shall be entitled to refuse to deliver up the Vessel until all such sums have been paid. Berthing charges accruing shall continue to accrue during such period. If any sums remain unpaid for a period of 60 days from the due date the LPHC shall be entitled to take possession of any such Vessel and to sell it and reimburse the Owner the sale proceeds less sums due to the LPHC and the reasonable sale costs and expenses incurred by the LPHC. The LPHC shall have no liability in this regard.

Unless otherwise agreed in writing by the LPHC, no refund is due for berths that are vacated part way through a year. Where a refund is agreed by the LPHC, this shall be subject to an administration charge of £75 which will be deducted from the refund. If payment for a berth is not received by the due date, the LPHC reserves the right to cancel the berth.

4. THE LICENCE

The right to berth a Vessel in the Marina relates to a particular Owner and Vessel. The LPHC reserves the right to cancel an offer of a berth if on inspection of the Vessel it is considered unsuitable for berthing in the Marina because of its dimensions, weight, method of construction, state of repair, type of fendering or other reason. In such circumstances a proportionate refund of any future berth rental charges already paid will be made.

A licence to berth in the Marina may not be transferred, nor may it be used for any other Vessel without the prior written consent of the LPHC.

Licences to berth in the Marina are issued on an annual basis from 1st April until 31st March. A new licence to berth issued part way through the year will be pro-rated to 31st March.

The Owner must provide the LPHC with an address and contact telephone number. Any change in the details relating to the Owner or Vessel provided on the application form, shall be notified to the LPHC forthwith.

The LPHC shall have the right to alter the location of the berth from time to time. Nothing in the licence shall entitle an Owner to the exclusive use of a particular berth particularly during events.

The berth allocated may or may not be alongside the pontoon. At the sole discretion of the LPHC, it may raft up vessels to a maximum of 3 deep on either side of the pontoons.

The granting of a berthing licence does not convey any entitlement, to the licence holder, to further licences beyond the date of the current licence.

On expiry of a current licence the Owner shall remove his/her vessel from the Marina.

5. USE OF ELECTRICITY

Electricity is available at most berths although the supply is not guaranteed.

Electricity charges for normal on-board low-powered equipment usage in the Marina are currently included within the berthing rates however the usage is continually monitored and the LPHC will investigate and raise an additional charge for any unusual or excessive usage.

If electricity is required to be supplied to vessels requiring high electricity demand or for use other than for low powered equipment, the Owner will be charged for the number of units consumed and shall pay on demand at the current rate of charges in force at the Marina from

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

time to time. Connectors and cables not supplied by the LPHC shall only be used if they are of proper manufacture and comply with UK government standards. The Owner will be liable for any damage to the electrical equipment incurred as a result of the acts or neglects of the Owner.

6. VESSEL IDENTIFICATION AND PARTICULARS

Vessels berthed in the Marina must have their name clearly displayed.

The Owner is required to provide the Port with all particulars of the Vessel, her crew, gear and contents which might affect use of the berth or the Vessel.

7. MOORING OF VESSEL

The Owner shall berth and leave the Vessel safely and securely moored and appropriately fendered and in such a manner, position and location as the LPHC may require.

The Owner must ensure that no damage, obstruction, nuisance or annoyance is caused to the Harbour and other Harbour or Marina users.

All necessary warps and fenders shall be supplied by the Owner. In the event that the Vessel has sails, these are required to be removed and stored safely when not in use and all rigging secured safely. Any outboard motors are to be removed from the water and stored safely on the Vessel when not in use.

Dinghies, tenders and rafts shall be stowed aboard the vessel unless a berth is separately provided by LPHC.

The Owner shall, if required to do so by the Harbour Master, give free access across the deck of his Vessel for persons and goods to and from vessels berthed alongside his Vessel.

The engines of any Vessel moored in the Marina shall not be operated in such a manner so as to cause damage to the bed or banks of the Marina or to any other vessel or property.

No fixtures or fittings may be attached to the LPHC's property without their consent in writing.

8. MOVEMENT OF VESSELS

The LPHC shall have the power to move, enter or board any Vessel if in its opinion this is necessary for the safety of the Vessel and/or safety or convenience of other Harbour users and/or safety of the LPHC's premises, plant or equipment and/or any other reason determined by the Harbour Master acting reasonably. The LPHC reserves to itself absolute discretion as to the means and procedure to be followed in the handling of any Vessel notwithstanding any express instructions given by the Owner in relation thereto.

If required by the LPHC, the Owner shall leave a duplicate set of their Vessel keys with the LPHC at all times. Keys will not be released to third parties without the Owner's prior consent.

9. MAINTENANCE OF VESSEL

The Owner shall keep the Vessel in a sound watertight and seaworthy condition, to the satisfaction of the Harbour Master, at all times.

Vessel owners should carry out regular inspections of their vessel and conduct maintenance as required.

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

Any vessel which is not in a seaworthy condition may be removed from the Harbour at the Owner's cost. The LPHC shall have the right to carry out emergency work on the Vessel and the Owner shall be liable for all reasonable charges for this work.

The LPHC shall have the right to moor, re-berth, board, enter or carry out any emergency work on the Vessel at the Owner's sole risk if in the LPHC's opinion such be necessary for the safety of the vessel or the safety and/or convenience of other users of the Marina or for the safety of the Marina, LPHC plant and equipment. The Owner shall pay the LPHC's reasonable charges for such work.

The Owner shall notify the Harbour Master as soon as practicable after becoming aware of (i) any vessel that has sunk or grounded in the Harbour or the occurrence of any accident within the Harbour limits. If the Vessel sinks within the limits of the Harbour, the LPHC shall be entitled to raise and salvage the Vessel and to recover from the Owner reasonable charges, fees and expenses incurred in respect thereof.

Where reasonably practicable the Owner will be given prior warning that the LPHC is about to exercise its rights under this clause.

10. REPAIR WORK

Except with the prior written consent of the LPHC which may be withheld at the LPHC's sole discretion, no repairs or works shall be carried out on the Vessel within the Marina premises or any lay-up area other than minor running repairs or minor routine maintenance by the Owner, the Owner's regular crew or members of the Owner's family. Such repairs shall be carried out in a safe manner so as not to cause or be likely to cause any damage or any danger, nuisance, disruption or annoyance to other Marina or Harbour users and local residents.

The LPHC reserves the right to terminate works in progress if it considers that these are being carried out or about to be carried out in breach of this regulation.

No welding or hot work is permitted without prior approval of the Harbour Master.

11. PROHIBITIONS ON COMMERCIAL AND RESIDENTIAL USE

No part of the Marina or the Vessel may be used for any commercial purpose without the prior written consent of the LPHC, which may be withheld at the LPHC's sole discretion. A commercial purpose shall include hiring, trips or charterparties for payment, offering to guests or others as paid accommodation, sale or demonstration for sale or hire of the Vessel.

The occasional use of the vessel by a personal friend of the Owner on payment to the Owner of a contribution towards the actual running costs of the Vessel shall not be deemed a commercial purpose.

The Owner shall be permitted to arrange a private sale of not more than one Vessel (being berthed or usually berthed at the Marina) during any one or more periods of twelve consecutive months of the licence granted to the Owner. In the event of such a private sale (i) the Owner shall not be permitted to display a "For Sale" notice on the Vessel whilst at the Marina; (ii) the Owner shall be present at all times during which the Vessel is to be viewed; and (iii) the Owner shall not be required to pay commission to the LPHC upon such a private sale except where prior notice has been given by the LPHC.

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

Owners are not permitted to sell any Vessel with berthing fees included. As stated in Clause 4 the licence to berth at the Marina is not transferable. On any sale or transfer of the Vessel the Owner (as seller or transferor) must provide the LPHC with the contact details of the buyer or transferee. Any Vessel which is sold or transferred must immediately be removed from the Marina unless the new Owner has already applied to the LPHC for and been granted a berthing licence for the Vessel.

Owners are expressly forbidden from declaring or using a Vessel as a principal or main place of residence.

Owners must not hire or rent the Vessel to third parties for any residential purpose.

No long term berth holder is permitted to reside aboard a Vessel in the Marina for more than 10 nights per month.

The Owner shall upon request by the LPHC supply full details in writing of all such use as may be permitted by this clause.

12. USE OF MARINA PREMISES

No part of the Harbour shall be used for water skiing, jet skiing, kite surfing, parascending, recreational swimming or diving or such other similar activity without the prior consent of the Harbour Master.

No person shall leave on the pontoon decks, walkways, access bridge or any equipment, fishing gear, ropes, supplies, stores or personal belongings or any other thing whatsoever except for brief periods in the course of transporting the items to or from the Vessel.

The LPHC shall have the right to remove and dispose of any such items left on the Marina premises without the prior consent of the LPHC.

The loading, landing or storage of any creels, fishing related equipment, with the exception of sea angling tackle, is prohibited.

All Marina users should obey the safety signs and instructions applying to the Harbour.

All marina users must ensure that toilet and shower units are kept clean and tidy at all times. Any malfunction should be reported to the Port via Harbour Radio.

Children must be accompanied by an adult at all times and appropriate lifejackets should be worn by children when on the pontoons.

Owners are responsible for reporting to the LPHC, any accidents involving injury to any person or damage to public or private property that occur, as soon as possible after they occur.

Owners and guests and crew must take due care of all property and facilities belonging to the LPHC and a fine may be levied for any damage caused to LPHC property. The Owner will be liable for the LPHC's costs of repairing or reinstating any loss of or damage to LPHC property and facilities caused by the Owner, guests or crew.

All persons using any part of the Marina or LPHC's facilities for whatsoever purpose and whether by invitation or otherwise, do so at their own risk.

Any Vessel, vehicle, equipment, goods or other property which is in the Marina and Harbour, shall at all times be entirely at the Owner's own risk and the LPHC shall not be held responsible

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

or liable for any loss or damage either done by or to the Vessel, equipment, goods or other property, howsoever that loss or damage is occasioned, including by theft and by any negligence of the LPHC.

13. LIMITATION OF LIABILITY

The LPHC shall, in no circumstances have any liability (including by way of indemnity) in respect of any of the following losses or damage howsoever caused including by negligence (whether such losses or damage were foreseen, foreseeable, known or otherwise): (a) any, indirect, incidental, special or consequential loss or damage; (b) loss of actual or anticipated income or profits; (c) loss of goodwill; (d) loss of business; (e) loss of revenue or of the use of money; (f) loss of contracts; (g) loss of anticipated savings; and (h) loss which could have been avoided by the Owner through reasonable conduct or by the Owner taking reasonable precautions.

The LPHC shall have no liability for any loss, damage, cost, expense or delay caused or arising as a consequence of: (a) acts, events or omissions beyond its reasonable control; (b) force majeure (including adverse weather, storm, tempest, lightning, earthquake, tidal waves and flood); (c) strikes, lock-out or other industrial disputes (whether involving the workforce of the LPHC or any other party); (d) failure of a utility service or transport network; (e) war, riot or civil commotion; (f) malicious damage; (g) wear and tear, leakage or latent defect of goods or equipment; (h) compliance with any law or governmental order, rule, regulation or direction; (i) accident; (j) breakdown of plant or machinery (including computer hardware, computer software, telephone, radio satellite or other communication system, alarm or C.C.T.V.); (k) loss/deletion of data; (l) fire (including steps to extinguish fire) or smoke; (m) temperature variation, mould or corrosion; (n) vermin or insects; (o) any Vessel being in an unsuitable condition; (p) acts or default of third parties including suppliers or sub-contractors; and (q) the failure of the Owner to comply with these Regulations.

Nothing in these Regulations shall exclude or in any way limit the LPHC's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.

14. MAINTENANCE OF BERTH

No guarantee is given or responsibility accepted by the LPHC for the suitability of any berth, structure, depth of water or facilities provided at the Marina. Owners shall immediately advise the Harbour Master should any defect become apparent in the Marina infrastructure including breakwater, mooring chains, ropes, buoys, pontoon berthing or water/electrical/safety appliances.

15. SPEED RESTRICTIONS

Vessels entering, leaving or manoeuvring within the Marina or Harbour shall do so with care and caution and at such speed and in such a manner so as not to damage, endanger or inconvenience other vessels, individuals, equipment or any part of the Harbour or Marina. A speed limit of 4 knots is in force in the vicinity of the Marina.

Owners, guests and crew are reminded that their Vessels are at all times subject to the speed restrictions and Byelaws and the requirements and powers of regulatory authorities, including but not limited to the Maritime and Coastguard Agency and the Health and Safety Executive.

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

Owners, guests and crew are to be mindful when navigating in and around the Harbour and its approaches that there are limitations imposed on large vessels navigating within a channel. Small vessels are required by international regulations not to impede the passage of a vessel which can only navigate safely within said channel. Leisure craft and small vessels are not to impose on the safe passage of large vessels and to keep well clear. If navigating in the vicinity of large commercial vessels then a listening watch should be maintained on VHF Ch14.

16. POLLUTION/FIRE SAFETY

No refuse is to be thrown overboard or left at any place within the Harbour or Marina except in the appropriate receptacles provided by the LPHC. The LPHC will levy a charge on the Owner for any clean-up or litter removal costs or liability which may be incurred by LPHC as a result of any breach by the Owners of this clause. Users are also reminded that in the event of refuse being thrown overboard or left on the pontoon then the persons responsible shall under the Byelaws be immediately liable to a fine which shall be paid forthwith.

No effluent, detergent, fuel or other pollutants shall be spilled or dumped within the Harbour limits. Oily rags, waste oil, used filters, etc must be placed in the appropriate bin and must not be left lying around. Any flammable materials, fuel oil, gasses and warning flares stored on board a Vessel shall be securely stored and contained in a safe and proper manner.

Smoking is strictly prohibited in any fuelling areas.

The Owner shall take all necessary precautions for the prevention of fire including providing at least one fire extinguisher on the Vessel suitable for the type of engines, fuel and equipment on the Vessel and shall comply with any requirements of the Harbour Master in this regard.

In the event of no refuelling berth being available, vessels owners and crews shall take all reasonable due care and attention to protect the environment and minimize the risk of fire whilst refuelling their vessels.

17. NOISE

No noisy, noxious or objectionable equipment, machinery, engines or radios shall be operated within the Harbour or Marina which shall cause or be likely to cause annoyance to other persons using or residing in the vicinity of the Harbour. Halyards and other rigging shall be secured in such a manner as not to cause annoyance or obstruction. Owners shall at all times behave in a considerate manner. The Owner undertakes for himself, his guests and all using the vessel that they shall not behave in such a way as to offend as aforesaid. The LPHC reserves the right to take such action as it may deem necessary to mitigate any nuisance or annoyance caused by halyards and the Owner agrees to pay the LPHC's charges thereof.

18. PETS

Users may not bring dogs or other animal pets onto the LPHC's premises. In view of the proximity of rabies on the Continent of Europe the LPHC may at any time and without prior notice require that all dogs and other animals be removed from its premises. No animal taken abroad (other than in Great Britain & Ireland) may be brought into the Marina and any Owner suspected of so doing will be reported to the authorities.

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

19. INSURANCE

It is a condition of any licence that Owners comply with the following requirements in relation to insurance. This applies to all Vessels using any berth within the Marina.

Owners shall maintain third party insurance in respect of their Vessel, crew and guests to cover all risks including damage by fire or other hazards to other craft and persons using the Harbour and Marina, and to the property of the LPHC, for a minimum sum of £3,000,000 or such greater sum as may be required by the LPHC and intimated to the Owner. Owners shall maintain first party removal of wreck insurance for a minimum sum of £3,000,000.

Such insurances shall be maintained with a reputable insurance company and evidence that the Vessel is so insured shall be provided each year to the LPHC on request and in any event within 28 days of the start of the licence, failing which the licence shall be deemed void. Where a vessel sale has occurred, the new owner must provide LPHC with evidence that the vessel is insured, as a condition of obtaining a new licence to berth at the marina.

Any changes to the Vessel's insurance provider or termination of insurance on the Vessel must be reported to the LPHC.

The use of a berth under a berthing licence is also conditional upon the licence holder complying with the insurance requirements under this Clause throughout the licence period.

Vessels found to be non-compliant with the insurance requirements of this Clause will have the berth licence cancelled immediately in accordance with the termination provisions of these Regulations.

20. SECURITY

The LPHC may introduce security measures at the Marina, as well as physical barriers to deter unauthorised access to the pontoons and vessels. However, ultimate responsibility for loss from or damage to a Vessel lies with the Owner.

Marina users must ensure that the access gates at the head of the gangways are securely closed on entering and exiting the facility.

21. HARBOUR BYELAWS/DIRECTIONS

Attention is drawn to the Byelaws, a copy of which can be provided on request. The Byelaws are effective in the Marina as well as the Harbour.

These Regulations do not in any way prejudice the powers of the LPHC under the Byelaws. The Owner shall comply with any further directions of the Harbour Master and the LPHC made in respect of good management of the Marina.

22. TERMINATION OF LICENCE

Unless the licence is terminated automatically for failure to comply with the insurance requirements in Clause 19, if the Owner fails to comply with any statute, byelaw, condition of berthing, any of the Regulations or any lawful direction given by the Harbour Master, the LPHC may terminate the berthing licence by sending written notice to the last known address of the Owner by registered post or by email to the Owner's last known email address. If the identity of the Owner or the Owner's contact details are not known to the LPHC, the LPHC shall serve such written notice by leaving a copy on the Vessel.

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

In such circumstances the Owner shall remove the Vessel and any other property belonging to him within 28 days. Notwithstanding the foregoing, the LPHC may terminate the berthing licence and require removal of the Vessel and any other property of the Owner with immediate effect in the event of any material breach of any statute, byelaw, Regulation or lawful direction of the Harbour Master (the determination of a material breach being made by the Harbour Master in their sole discretion).

On failure to remove the Vessel within the 28 day period or immediately (if applicable as per the foregoing), the LPHC may at the Owner's sole risk and expense remove the Vessel from the Harbour and store or berth it elsewhere and all reasonable costs incurred by the LPHC in so doing shall be recoverable from the Owner. If (i) the Owner fails to collect and remove the Vessel within a further 28 days (following the initial 28 day period if applicable as per the foregoing); or (ii) any sums due to the LPHC remain unpaid for a period of 60 days from the due date the LPHC shall be entitled to take possession of the Vessel and to sell it and reimburse the Owner the sale proceeds less sums due to the LPHC and the reasonable sale costs and expenses incurred by the LPHC. The LPHC shall have no liability in this regard.

23. GENERAL

Headings are for ease of reference and do not form part of or affect the interpretation of these Regulations.

The Regulations shall apply to all Marina users.

The Regulations may be altered or amended from time to time by the LPHC and such changes shall be deemed to be incorporated herein upon any notice of amendment being given to the Owner or published on the LPHC website or posted in LPHC's offices.

Notices under these Regulations may be sent to the Owner's last known physical or email address and/or posted on the LPHC's website. If the identity of the Owner or the Owner's contact details are not known to the LPHC, the LPHC shall serve such notice by leaving a copy on the Vessel if located within the Marina.

In the absence of express acceptance by the Owner of these Regulations, acceptance shall be implied in the event of the entry or delivery of any Vessel, person, goods or equipment into or onto the Marina or by oral application to the LPHC for entry to the Marina or the use of any Marina facility by or on behalf of any Owner.

If and in so far as any part or provision of the Regulations is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Regulations and the remaining provisions of the Regulations shall continue in full force and effect.

The failure of the LPHC to exercise or enforce any right conferred on them by the Regulations shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

These Regulations and in particular the limitations on liability are intended to inure for the benefit of both the LPHC and its board members, employees, agents and contractors and the LPHC contracts on these Regulations on its own behalf and as agent for and trustee for the benefit of its board members, employees, agents and contractors.

All legal relationships and agreements between the LPHC and the Owner shall be governed in all respects by the laws of Northern Ireland and the Owner hereby agrees and submits to

RULES AND CONDITIONS FOR USERS OF THE FOYLE PORT MARINA

the exclusive jurisdiction of the Courts of Northern Ireland to determine any disputes arising out of or in connection therewith.

The LPHC shall nevertheless be entitled to seek any interim relief, arrest or secure property of the Owner or to take steps to enforce any obligation or judgment against the Owner in any jurisdiction.

The provisions of the General Terms & Conditions shall apply to the Owner and the Vessel to the extent they are not at odds with the Regulations.