
THE YARMOUTH (ISLE OF WIGHT) HARBOUR COMMISSIONERS

LICENCE TERMS FOR DINGHY PARK LICENCE

1. THE LICENCE

- 1.1 If you accept our offer of a licence by the specified date, we will allocate you a space in the Harbour's Dinghy Park in which to keep a vessel for the Licence Period.
- 1.2 You will pay to us the Charge in full before the Licence Period begins.
- 1.3 A Licence is valid only for the Licence Period and not beyond. A Licence confers no right on you to the issue of another Licence when it ends.
- 1.4 The Total Overall Length of the Boat is as stated in the Licence Information.
- 1.5 The Licence period runs from 1st January to the 31st of December in any year.
- 1.6 The Licence fee is reduced by 50% for any Licences after the 1st October until the 31st December.

2. YOUR GENERAL OBLIGATIONS

- 2.1 You must use the Dinghy Park only as expressly permitted by these Licence Terms.
- 2.2 Your Boat must display conspicuously any up to date identification markers provided to you by us.
- 2.3 You must keep your boat in a seaworthy clean tidy and presentable condition at all times to the reasonable satisfaction of the Harbour Master. Your trailer must be kept in good working order. If we believe the boat and or trailer do not meet the standards required by YHC we reserve the right to require you to remove the boat and trailer from the dinghy park until you have put them into a satisfactory condition. For environmental reasons old wheels and tyres are not permitted to chock up your vessel.
- 2.4 No work can be done in the Dinghy Park if that work will or might cause nuisance or annoyance to other Harbour users, or interfere with our activities. Any maintenance, repairs or other work carried out in the Dinghy Park must be undertaken in compliance with the Harbour Rules. (By way of example only, permits must be obtained from us for any hot work).
- 2.5 You will take reasonable precautions at all times to ensure that no person or vessel using the Dinghy Park or Harbour is placed in jeopardy by any action or failure to act by you, whether through the use of the Dinghy Park or Harbour by you or by any third party. In case of accident or any other case of emergency you must give notice as soon as practicable to the Harbour Master or his authorised Assistants.
- 2.6 You shall ensure that all elements of rigging on the Boat using the Dinghy Park are secured so as not to cause nuisance or annoyance to us or to other Harbour users.
- 2.7 If your Boat has an outboard engine, then whenever the Boat is left in the Dinghy Park you shall either leave the outboard engine in the lowered position or leave the outboard engine in a raised position with a suitable covering or fender over the protruding end of the outboard motor so as to prevent damage to adjacent boats or other Dinghy Park users or injury to individuals.

2.8 Without in any way limiting the Licence Terms, you shall at all times:

- a. observe and perform all statutory and other obligations relating to the Harbour;
- b. observe and perform these Licence Terms and all Harbour Rules from time to time in force; and
- c. comply with all lawful requests made by the Harbour Master and Harbour employees.

The up to date version of the Licence Terms and Harbour Rules are available from the Harbour Office or on our website at www.yarmouth-harbour.co.uk/harbour-facilities/dinghy-park/.

2.9 You acknowledge that this Licence does not in any way prejudice or limit the powers given to us by the Harbour Revision Order(s), General Directions or Byelaws or other applicable Harbour rules or regulations from time to time in force or by law.

2.10 If we have asked you to take action in respect of the Boat or other equipment in the Dinghy Park and you do not, and we take such action, we may charge you for taking that action on your behalf in accordance with our usual charges.

2.11 After each use the Boat is to be returned to the allocated space within the Dinghy Park and not remain on the pontoons or anywhere else within the Harbour limits.

2.12 We may also charge you for our administration costs and any costs we incur where we are required to raise with you any breach of these Licence Terms.

Details of our charges and usual practices in levying these are available from the Harbour Office and are set out on our website at www.yarmouth-harbour.co.uk/on-the-water/mooring-fees.

2.13 You will pay to us promptly all sums due from you under the Licence Terms. All payments must be made within 30 days of the date on which they are demanded, or by such later date as we tell you. Any payment not received within the 30-day period will result in your license offer being revoked and your dinghy will have to be removed from YHC premises.

VAT will, where applicable, be charged by us at the relevant rate and this will be payable by you. We will tell you where VAT is applicable to be charged.

2.14 You will be able to collect from reception a short stay parking permit numbered the same as your slot, this is valid for parking only whilst using your vessel. Your dinghy park license will be revoked if the parking is abused. You are permitted to park only (subject to space availability) in the new dinghy park car park south of the dinghy park.

3. Third party insurance

3.1 You are liable for any loss or damage caused by you, your boat or your crew. You shall maintain adequate insurance for the boat for the duration of your Licence, including third party liability cover for not less than £2,000,000 and, if appropriate, Employers' Liability cover to at least the statutory minimum. You are obliged to provide us with evidence of such insurance upon the renewal of your Licence with us and in any event, within 7 days of being requested to do.

4. Allocation of a Space on the Dinghy Park

4.1 We will tell you which space you may use for your Boat. We may reallocate spaces from time to time and change the space allocated to you to another space of a similar type/size at any time. Only one boat positioned on one trailer is permitted per slot no piggy backing is allowed. Kayaks must be stowed in the racks provided only.

5. Assignment and transfer

- 5.1 This Licence is personal to you and relates only to the Boat described in the Licence Information. The Licence may not be transferred or assigned to another person, including to a new owner. You may not permit anyone else to use it without our express written consent.
- 5.2 You may not use the space for a different Boat (either temporarily or permanently) without our express prior consent.

6. Changes of Licence Information or to the Boat

- 6.1 You must tell us as soon as possible if any of the Licence Information changes. We may require you to notify us by completing an appropriate form for the relevant circumstances.
- 6.2 We will consider reasonably any request from you to vary this Licence to include a different Boat. In the event of a change of dinghy or new license offer, the dinghy will have to be inspected by a member of the berthing team prior to the license being issued. Any vessels not meeting YHC standards will be refused access to the dinghy park, any fees already paid will be refunded. If we do not have a suitable space available, then you may ask to be returned to any Dinghy Park waiting list that we run at that time.

If in the Harbour Master's reasonable opinion, the proposed new Boat is of a suitable type/size (including any trailer) for the allocated space, then we would normally agree to such a variation.

If the proposed new Boat is not of a suitable type/size (including any trailer) for the allocated space, our offer to you of a variation to the Licence will depend upon whether we have a suitable alternative space available.

If we do not have a suitable space available, then you may ask to be returned to any Dinghy Park waiting list that we run at that time.

- 6.3 We will periodically trim and weed the dinghy park. You are also responsible for keeping your slot weed and litter free.

7. Termination of the Licence

- 7.1 Without prejudice to any right or remedy available to us, we will be entitled to end this Licence immediately by notice in writing to you if:
- (a) you fail to pay in full any money owed to us by you, whether arising in connection with the Licence or otherwise, in any such case within 7 days of the date on which payment was due; or
 - (b) if you commit any breach of this agreement and that breach:
 - (i) is a breach that cannot be put right; or
 - (ii) is a breach that can be put right but after we have notified you of the breach and what you must do to put it right, you have not done so within the time we have set in our discretion (but not less than 7 days) for you to do so; or

- (c) any of the following events have occurred:
 - (i) you no longer own the Boat;
 - (ii) we have begun a prosecution of you under the Harbour Rules for breach(es) of those Rules; or
 - (iii) you have committed a serious breach or persistent breaches (whether individually serious or not) of the Harbour Rules and we have given you warning that a prosecution will be considered by us if there are further breaches of such Rules by you.
- (d) If you are unable to pay your debts or become insolvent or bankrupt, or make or propose to make an arrangement or composition with your creditors.

7.2 Without prejudice to any right or remedy available to you, you will be entitled to end this agreement by giving not less than 30 days' notice in writing to us at any time.

7.3 On the ending of this Licence, you must remove the Boat and other equipment from the Dinghy Park. If you do not remove it, we may move it and sell or otherwise dispose of the Boat and other equipment. If we do, we may retain from any proceeds of sale or disposal any costs that we have incurred in having to move, sell or dispose of it.

7.4 The ending of this agreement does not affect any provision of it which is intended to continue after this agreement has ended, or to come into force when this agreement ends.

7.5 If we do not enforce this agreement or any part of it or we do not take action against you for breach, it does not mean that we cannot enforce that or any other provision or take action against you for a subsequent breach.

7.6 Termination of the Licence by us shall not entitle you to a refund of any money paid by you in respect of this Licence because of a breach in licence terms and conditions.
If you end this Licence by giving us notice, you will be entitled to a refund of 50% of the charges paid by you in respect of the allocated space for what should have been the remaining period of the Licence from the date of termination, calculated on a pro rata basis. In the case of licence being for a Kayak no refund will be due.
In the event that we need to terminate the licence during its term you will receive a refund pro rata for the remaining term.

8. Commissioners' general obligations/no other liability of Commissioners

8.1 Neither we, nor any individual Commissioner or any of our authorised officers or other employees, will be liable for any claim whatsoever arising out of or in connection with a grant or refusal to grant any Licence or the implementation or enforcement of the provisions of the Licence.

8.2 We shall not be liable for any loss or damage caused by events or circumstances beyond our reasonable control (such as severe weather conditions, the actions of third parties not employed by us or any defect in a customer's or third party's property); this extends to loss or damage to Boats, gear, equipment or other property left with it for work or storage, and harm to persons entering the Harbour and/or using any facilities or equipment.

8.3 These Licence Terms are under constant review by us and may be changed at any time. We will notify you of any changes on our website and by posting a notice at the Harbour Office. We may also send you details by post or email, but shall not be obliged to do so.

8.4 Notices:

- (a) All documents and other written communications to be sent to you may be sent at our option by email (where we have an email address for you as part of the Licence Information) or by ordinary post to your address shown on the Licence Information, unless you have given us written notice of a change of address.
- (b) All documents and other written communications to be sent to us or required to be delivered to the Harbour Office should be sent by email to info@yarmouth-harbour.co.uk or by ordinary post or delivered by hand to the Harbour Office marked for the attention of the Administration Department.
- (c) Documents sent by email will only be treated as having been served if the email is acknowledged or replied to or if the sender has a "read receipt". An automated response to an email that the intended recipient is "out of office" is to be treated as proof that the email was not received.
- (d) A notice or document received by email before 17:00 on a Working Day is to be treated as received on that day. If it is received after 17:00 or a day which is not a Working Day it is to be treated as received on the next Working Day.

8.5 In the event of any conflict between the terms of this agreement and the Harbour Rules, this agreement shall prevail, but if a rule expands the terms of this agreement or vice versa, both shall apply.

8.6 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

8.7 This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

8.8 None of your rights or obligations under the Licence may be assigned, transferred, sub-contracted or otherwise disposed of in whole or part without our prior written consent. We may assign, transfer, sub-contract or otherwise dispose of all or any of our rights or obligations under this agreement by giving notice to you, provided that such a disposal of rights or obligations does not affect any of your rights or remedies under the Licence.

9. Interpretation

9.1 In this agreement, the expressions below have the respective meanings given to them (unless the context otherwise requires):

"Boat" means the Boat specified in the Licence Information.

"Harbour" means the Inner Harbour and the Outer Harbour as defined in the General Directions.

"Harbour Master" means any person appointed as such by the Commissioners, and his deputies and assistants, and any other person or employee of the Commissioners for the time being authorised by the Commissioners to act, either generally or for a specific purpose, in the capacity of Harbour Master.

"Harbour Rules" means all General Directions, Special Directions, Byelaws and other rules and regulations of the Harbour as are in force from time to time.

"Licence Period" means the period from the licence commencement date specified in the Licence Information to the licence end date also specified in the Licence Information, or such shorter period

as may occur by either your or us ending the Licence for any reason allowed under its terms.

"**Vessel**" has the meaning given in the General Directions.

"**We**" means the Yarmouth (Isle of Wight) Harbour Commissioners and includes any person authorised on behalf of the Commissioners.

"**You**" means the person to whom a Licence is issued.

9.2 In these licence provisions, unless the context otherwise requires:

a reference to the General or Special Directions, a Byelaw or a statute or a Harbour Revision Order or other statutory instrument, or any provision of any of these, is to be construed as a reference to any amendment, re-enactment or replacement of the same as may have been made or may from time to time be in force;

a reference to a **person** means an individual only and, as appropriate, that person's respective successors or assigns; and

words importing the plural shall include the singular and masculine shall include the feminine, and vice versa.

9.3 Headings are used only for convenience and will not affect interpretation.

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