

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964 (AS AMENDED)

**PROPOSED THE GREAT YARMOUTH PORT AUTHORITY
(CONSTITUTION) HARBOUR REVISION ORDER 2014**

**STATEMENT IN SUPPORT OF APPLICATION FOR
AN ORDER BY GREAT YARMOUTH PORT
AUTHORITY**

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1. INTRODUCTION

- 1.1 This statement relates to the application by Great Yarmouth Port Authority for the proposed Great Yarmouth Port Authority (Constitution) Harbour Revision Order (“the HRO”).
- 1.2 The application, made in a letter to the Marine Management Organisation (“the MMO”) dated 11 September 2014, is accompanied by:
- (a) A draft of the HRO;
 - (b) This statement; and
 - (c) The fee for the application, paid to the MMO in advance of the application, in the sum of £4,000.00.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4 The proposed order would amend the constitution of the Authority. The Order will reduce the number of Board members required from 11 to 7 and set out a new appointment process in line with best practice set out in ‘Modernising Trust ports [Second Edition]’.

2. GREAT YARMOUTH PORT AUTHORITY (GYPA)

GYPA is the statutory port authority for the Port of Great Yarmouth that is established by local legislation collectively known as the Great Yarmouth Port Authority Acts and Orders 1866 to 2005. Board Members are appointed by various bodies and organisations.

3. GREAT YARMOUTH PORT

- 3.1 The Port, is situated in the county of Norfolk on the eastern seaboard of the United Kingdom with the closest sea routes to the northern European coastal ports.
- 3.2 The history of the Port has been diverse and in the 20th century the port developed from a major fishing port to England’s premier North Sea Gas support base with interests in general, bulk and project cargoes. In the early 1980's the Board of GYPA realised that the future sustainability of the port could only be guaranteed by having the ability to accept longer and deeper drafted vessels. Following extensive modelling and research, GYPA embarked

on a project to fund and build an Outer Harbour to supplement and enhance the facilities available in the River Port. The Board of GYPA set out to achieve this aim by promoting the Great Yarmouth Outer Harbour Act (the 1986 Act). In 2004 the Board of GYPA in partnership with Norfolk County Council and Great Yarmouth Borough Council formed a joint procurement company (Eastport Great Yarmouth Ltd) to attract the necessary investment to achieve the construction of the Outer Harbour. In 2007 commercial agreements were concluded with International Port Holdings Eastport who have invested in excess of 100 million US dollars, resulting in the construction of the Outer Harbour which opened for business in 2010.

- 3.3 The Port deals with in excess of 4000 pilotage movements per annum and a large number of vessel shifts within the Port. The Outer Harbour is available for and has attracted a number of businesses that require the deep water and easy access that the Outer Harbour offers. The River Port continues to handle the same shipping traffic as prior to the Outer Harbour development.

4. **THE HARBOURS ACT 1964**

- 4.1 Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been devolved to the MMO (see paragraph 1.3 above) to make an order under that section (known as a harbour revision order) in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 to the Act.

- 4.2 Section 14(2)(a) of the 1964 Act requires that written application be made to the MMO for the reconstitution of the Board of the Authority, section 14(2)(b) provides that the MMO must be:

"satisfied that the making of the order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships".

- 4.3 Because this is not an application for a harbour revision order which, directly or indirectly, authorises a project (within the meaning of paragraph 1 of Schedule 3 to the 1964 Act), prior notification to the MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

4.4 The application for the HRO under section 14 of the Act of 1964 meets the conditions set out in that section. In particular, the application meets the requirements of:

- (a) section 14(1) of the 1964 Act because it is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of its statutory powers and duties for the purpose of achieving objects falling within Schedule 2 to the Act.
- (b) section 14(2) of the 1964 Act because:
 - (i) The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour: and
 - (ii) The making of the HRO is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner.

5. NEED AND JUSTIFICATION FOR HRO

5.1 General

5.1.1 The proposed HRO would reconstitute the Board of the Authority, reducing the number of Board members, in line with the Modernising of Trust Ports Reviews.

5.1.2 An explanation of the HRO is set out below.

5.1.3 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

5.2 Article 3 of the Order – Incorporation of the Commissioners Clauses Act 1847

5.2.1 This article incorporates a limited number of section of the said act in relation to:

- a) the manner of setting up, adjourning and holding of Board meetings and special meetings.
- b) The members may provide and set up offices.
- c) Power for the Boards to enter into contracts, how they may deal with breach of contract, conveyance of lands.
- d) Members not to be individually liable for acts done as Board members and indemnifies members for acts done in the execution of their office.

- e) Actions by or against members and how they may be executed. Executions of actions against the members not to be levied against their personal lands or goods. Members to be reimbursed for legal actions carried out on behalf of the Board and members.
- f) How indictments may be dealt with.

5.2.2 Article 3 in general lays out the procedures for the holding of Board meetings and protection for members of the Board.

5.3 Article 4 of the Order - Constitution and membership of the Port Authority

5.3.1 This article lays out the future constitution of the Board, reducing the selected members from 11 to 5 and appointing the Harbour Master and Clerk to the Board. This Article reduces the size of the Board in line with the recommendations of the Trust Ports Reviews.

5.4 Article 5 of the Order - Selection panel

5.4.1 Article 5(1) details the composition of the selection panel for selecting Board members

5.4.2 Article 5(2) lays down the criteria for appointees to the selection panel.

5.4.3 Article 5(3) details the administrative support that must be provided to the Board.

5.4.4 Article 5(4) requires that the selection panel consult with the Board before making an appointment to the Board.

5.5 Article 6 of the Order - Members' Declaration

5.5.1 Article 6 requires that each member makes a declaration (as laid out in Schedule 1 of the Order). Failure to make the declaration will result in termination of the Board member's appointment

5.6 Article 7 of the Order - Procedural provisions applying to Port Authority

5.6.1 This article refers to Schedule 2 which provides for: the appointment of Chairman and Vice-Chairperson, irregularities, committees, meetings and procedures, declaration and register of interests, resignations and disqualifications of members, passing of resolutions, appointment of clerk and payment of members.

5.7 Article 8 of the Order - Transitional provisions

5.7.1 This article refers to Schedule 3 which details transitional arrangements when initially reconstituting the Board; including members to continue in office, terms of office, composition of the Board after re-constitution and appointment of members.

5.8 Article 9 of the Order – Selection of Members

5.8.1 This article details the skills, competencies, knowledge, experience or ability requirements for persons wishing to become members of the Board and appointments must be in accordance with Secretary of State guidance.

5.9 Article 10 of the Order - Appointment of Members and terms of office

5.9.1 This article lays out the criteria and conditions for members holding office on the Board.

5.10 Article 11 of the Order – Casual vacancies.

5.10.1 This article lays out the process for filling casual vacancies as and when they occur.

5.11 Article 12 of the Order – Revocations and Appeals

5.11.1 This article details the Acts and Orders that are to be revoked or repealed.

5.12 Conclusion

Following the transfer of the commercial business operation of the Port to International Port Holdings in 2007 the role of the GYPA Board, albeit important as the statutory harbour authority, has significantly changed. The membership of the Board is no longer appropriate in terms of the size (11 members) or in the manner that the Board members are appointed. The purpose of this HRO is to reduce the size of the Board to an appropriate level (7 members) and to instigate the Nolan principles of selection in line with the guidance detailed in the Trust Port Reviews.

**STATEMENT IN SUPPORT OF APPLICATION FOR AN
ORDER BY GREAT YARMOUTH PORT AUTHORITY**

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