



Marine
Management
Organisation



Department
for Transport

Harbour Orders

Consultation on a revision to Harbour
Order application fees

16th July 2019



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Contents

1	Purpose of the document	1
2	The consultation process.....	2
3	Introduction.....	4
4	The current fees regime	5
	Overview of proposed options for harbour orders fees.....	8
5	Overview of option 1.....	9
6	Overview of option 2.....	10
7	Implementation.....	12
8	What happens next?	14

1 Purpose of the document

1.1 This consultation seeks your views on proposals to revise the fee levels for harbour order applications in England and the Port of Milford Haven (a reserved trust port)¹. These have been administered by the Marine Management Organisation (MMO) since 2010, through a delegated function from the Department for Transport (DfT). The DfT and the MMO are jointly seeking your views.

1.2 Subject to consultation responses and Ministerial agreement the planning assumption is for any change to come into effect from 1st October 2019.

1.3 When reading about the proposed changes in this document, please consider the following questions:

- **Do you have any comments on the Government's reasons for reviewing the fee structure and fee levels for harbour order applications?**
- **Do you have any comments on how the Government has calculated the proposed fees?**
- **Do you have any views on the proposed changes to the fee levels for harbour order applications?**
- **Do you have a preferred option?**
- **Do you have any other comments relative to this consultation?**

¹ Reserved trust ports are defined in the Wales Act 2017. From 1 April 2018 Welsh Ministers took over responsibility for port development policy and applications for HO for harbours wholly in Wales (apart from major trust ports) under the Wales Act (Commencement No 4) Regulations 2017 (S.I. 2017/1179). The Department for Transport retain responsibility for the Port of Milford Haven.

2 The consultation process

Who will be affected by the proposals?

- 2.1 This consultation document is directed at Local Harbour Authorities and anyone interested in, or involved with harbour activities that take place in England and the Port of Milford Haven.
- 2.2 This consultation may also be of interest to businesses, operators and individuals that carry out marine activities, conservation bodies, and environmental groups that are concerned about the effect of human activities on the marine environment, navigational matters and human health. Many other people and groups are also interested about what takes place along the coastline and in the seas around us and may therefore have an interest in these proposals. The MMO welcome comments on the consultation from these interested groups also.

Timing and duration of this consultation

- 2.3 The consultation period will commence on 16th July 2019 and will be open to responses for a period of eight weeks.
- 2.4 The consultation period will end at midnight on 10th September 2019.
- 2.5 If you have any enquiries, or wish to receive hard copies of the consultation documents, please contact us by using the details shown above.
- 2.6 We will summarise all responses and place this summary on our website at www.gov.uk/mmo.
- 2.7 This summary will include a list of the names of organisations that responded. It will not list personal names, addresses or other contact details (for either organisational or individual responses).
- 2.8 We will retain a copy of responses so that the public can see them; copies will be made available on request. Also, members of the public may ask for a copy of responses under freedom of information legislation.
- 2.9 Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes these are primarily the Environmental Information Regulations 2004 (EIR), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIR, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

- 2.10 If you want the information that you provide to be treated as confidential, please be aware that public authorities are bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 2.11 This consultation is issued in line with the principles of consultation issued by the Cabinet Office. These can be found at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>

3 Introduction

- 3.1 Harbour Orders (HO) are a form of delegated legislation made under the Harbours Act 1964 (HA 1964), which either amends existing harbour legislation or introduces new harbour legislation. All applications for HO were processed by the Department for Transport (DfT) until 2010 when the MMO was established under the Marine and Coastal Access Act 2009 (MCAA). Section 42A of MCAA made provision for certain functions to be delegated by the relevant authority to the MMO. The Harbours Act 1964 (Delegation of Functions) Order 2010 (“the 2010 Delegation Order”) enabled the MMO to carry out the functions of the DfT Secretary of State in relation to HO.
- 3.2 Harbour Authorities seeking permission for harbour development will often require other permissions such as a marine licence from the MMO. Undertaking this work alongside HO enables the MMO to operate a more streamlined approach to the delivery of sustainable development of the marine and coastal environment.
- 3.3 In light of the delegation arrangements with the DfT, the MMO is undertaking this consultation together with the DfT who are responsible for ports policy, with both Defra and DfT Ministers agreeing to the review of fees and this consultation.

4 The current fees regime

- 4.1 The current fees for harbour order applications are based on four fixed fee bands. These are based on the complexity of the application and type of application. The fixed fee charged under the Harbours Act 1964 must accompany the application.

The current fees are:

Band 1: £2,000 for an order the sole purpose of which is to amend the borrowing powers of an existing authority

Band 2: £4,000 for any other order that would not empower an authority to undertake works and Harbour Reorganisation Schemes (HRS)

Band 3: £6,000 for an order which expressly empowers an authority to undertake works where an Environmental Impact Assessment (EIA) is not required

Band 4: £10,000 for an order which expressly empowers an authority to undertake works where it is decided that an EIA is required.

Why change?

- 4.2 Current fees for applications do not reflect the actual costs to the MMO in determining HO applications nor do they recognise the increased environmental complexity of some of these applications which carry an associated cost to the MMO. The fee structure was last updated 25 years ago in 1994. Prior to delegation of powers to the MMO to determine HO, DfT consulted on significant fee increases in 2007 which sought the views of harbour authorities and their representatives. The consultation recognised that the forthcoming Marine Bill (later to become the Marine and Coastal Access Act 2009) would have an impact on the handling of the HO process and that fees would have to be increased regardless of which organisation handled HO.
- 4.3 In 2008, the DfT commissioned a report reviewing the recommendations of the consultation. This recommended that the DfT should provide the MMO with the powers to implement an alternative fee structure to align fees more closely to actual costs. Upon vesting on 1 April 2010, the MMO was delegated the functions under the 2010 delegation order and the fees in accordance with the existing structure set by the DfT in 1994. The HO service was subsequently highlighted as significantly under recovering costs during the Governments Spending Review in 2015.
- 4.4 The MMO estimate that since 2011 only 37% of costs have been recovered from applicants which is £200k compared to £540k cost, the remainder being funded by the tax payer. A revision to the fee levels for harbour orders is needed to ensure that they reflect the full costs incurred by the MMO in determining applications and

those costs are passed on to businesses. This will ensure that those seeking to undertake a HO meet the cost of determining their application. This reduces the burden on the tax payer and addresses the current difference in the treatment of MMO's fee paying customers, ensuring cost recovery is equitable to all the MMO applicants.

4.5 Despite significant under recovery of costs since 2010, the MMO has taken significant actions to improve services and increase efficiencies in the processing of HO. This was implemented through:

- Allocating a dedicated resource and contact points for harbour order applications with the creation of the Harbour Orders Team, including the provision of non-chargeable pre-application advice
- Improved online guidance to assist applicants in their understanding of the process through to determination
- Streamlined internal processes
- Improving communication with applicants through regular contact points to ensure applicants are informed of case progress
- Introduction of an online public register, making documents electronically available to consultees and interested parties

4.6 This has contributed to a significant decrease in the average application time from 29 months (2008-2011) to 12.5 months (2012-2018)

4.7 Going forward the MMO intends to make further improvements to the HO service by:

- Further enhancing online guidance
- Providing a named case officer for each HO application

4.8 It is difficult for the MMO to sustain the current level of service provided or pursue any further improvements to the HO service at the current level of cost recovery; especially as we face competing priorities and increasing pressure on resource and Government subsidy.

Policy options

4.9 Interpretation of the Harbours Act 1964 is that only one fee per HO application is payable. This must be known at the time of formal application and therefore only a fixed fee structure is permissible. The MMO undertook a review of applications received and completed since April 2011 to consider if additional fee categories were appropriate. However, there was insufficient evidence available to support adding further sub-categories fee bands at this time. Therefore any change to the existing fee structure or addition of new/sub fee bands has been discounted.

Three potential options have been considered:

Option 0: Do Nothing - The tax payer would continue to subsidise the harbour orders service. This would not satisfy the Government's policy objective on cost recovery that those that take benefit from a service should pay for it; or ensure the MMO charge fee paying customers consistently; or create opportunities for the MMO to make further improvements to the HO service. This option has therefore been discounted.

Option 1: Increase fees based on an average total of the MMO cost for the continued provision of a complete as is service. With a fee encompassing all activities rolled in to one fixed fee per band, this would result in fee bands increasing by 226% - 336%.

Option 2: Increased fees based on the statutory service (see section 6.2 for detail). The fixed application fees (based on the MMO cost averages) are lower; with fee bands increasing by 213% - 289%. The statutory service will be supplemented by a chargeable discretionary service for non-statutory pre-application work at the applicant's request. This is chargeable under section 27 of the Marine and Coastal Access Act 2009 and would be separate to the fee for statutory activity. This is the MMO's preferred option and provides the applicant with a choice.

4.10 According to the Office for National Statistics, annual Consumer Price Index (CPI) inflation from 1994 to 2018 ranged from -0.53% to 5.20% with a total cumulative increase of 95.15% over the 24 year period. Fee increases related to CPI would range between £1,903 (band 1) and £9,515 (band 4) but this would not address the costs incurred to MMO or recognise the increased complexity of applications. There have been a number of key amendments, which have added complexity to the application determination; for example:

- Environmental Impact Assessment Directive – assessment of the effects of certain public and private projects on the environment
- Habitats Directive – conservation of natural habitats and of wild fauna and flora
- Wild Birds Directive – conservation of wild birds

How have we calculated the costs?

4.11 The MMO has assessed applications received and completed under each fee band since April 2011 and calculated the average amount of time required to process each application from initial engagement to discuss HO proposals to the final determination of an application.

4.12 The MMO used the current full cost recovery rate of £122 per hour to calculate the average cost of providing the harbour orders service. This includes EIA

screening/scoping (where applicable), discretionary pre-application services and application determination. Any cases which involved public inquiry or judicial review have been excluded as it is recognised that such cases would unfairly affect the average case.

4.13 The MMO's current cost recovery rate has been calculated in line with Managing Public Money guidance and has been ratified by the HM Treasury assurance process. It was implemented through a revision to the Statutory Instrument (Marine Licensing (Application Fees) (Amendments) Regulations 2018 No. 850) for Marine Licence applications and pre-application advice in September 2018.

4.14 Option 1 is based on the cost of providing a full service, including discretionary pre-application work, whereas it is proposed under option 2 that the discretionary pre-application service is offered separately for an additional charge of £122 per hour + VAT and the proposed lower fee has been recalculated without these costs.

Overview of proposed options for harbour orders fees

Current Fees (£)		Proposed Fees (£)		
Band	Description	Option 0	Option 1	Option 2
1	Amend the borrowing powers of an existing authority	2,000	7,229	6,680
2	Any other order that would not empower an authority to carry out works and Harbour Revision Scheme	4,000	17,360	15,579
3	An order which expressly empowers an authority to carry out works where an EIA is not required	6,000	19,581	18,756
4	An order which expressly empowers an authority to undertake works where an EIA is required.	10,000	43,633	35,055

A. Do you have any comments on the Government reasons for reviewing the fee structure?

B. Do you have any comments on how the Government has calculated the proposed fees?

5 Overview of option 1

- 5.1 Proposed changes under option 1 would increase application fees to more accurately reflect the cost of providing a complete service. There is no proposal to change the way customers engage with the MMO or pay for the harbour orders service.
- 5.2 The proposal is that band 1 applications, to amend the borrowing powers of an existing authority for specific activities, will increase from £2,000 to £7,229 (261%).
- 5.3 The proposal is that band 2 applications, any other order that would not empower an authority to carry out works and HRS, will increase from £4,000 to £17,360 (334%).
- 5.4 The proposal is that band 3 applications, an order which expressly empowers an authority to carry out works where an EIA is not required, will increase from £6,000 to £19,581 (226%).
- 5.5 The proposal is that band 4 applications, an order which expressly empowers an authority to undertake works where an EIA is required, will increase from £10,000 to £43,663 (336%).
- 5.6 Applicants will continue to benefit from the certainty of a one-off fixed fee covering the application, including EIA screening/scoping (where applicable) and discretionary pre-application service.
- 5.7 The new fee levels would be applicable to any new application received on or after the implementation date.
- 5.8 There would be no change to the fee due for applications received before the implementation date.

C. Do you have any views on the proposed changes to the fee structure for harbour order applications as set out in option 1?

D. Do you have any views on the proposed level of the fees for harbour order applications as set out in option 1?

E. Do you have any views on the proposed transition to fees for harbour order applications as set out in option 1 (5.7 & 5.8)?

6 Overview of option 2

- 6.1 Proposed changes under option 2 would increase application fees to more accurately reflect the cost of providing only the statutory elements of the service.
- 6.2 The application fee will include all statutory elements of the harbours orders application process, and will include:
- EIA screening and/or scoping (where applicable)
 - Application validation
 - Approval of notification/advertisements (excluding advertising costs)
 - Formal consultation
 - Determination/Decision
 - Statutory Instrument validation
 - Enabling Laying of Order by DfT
 - All general administration relating to managing the application process
- 6.3 The proposal is that band 1 applications, to amend the borrowing powers of an existing authority for specific activities, will increase from £2,000 to £6,680 (234%).
- 6.4 The proposal is that band 2 applications, any other order that would not empower an authority to carry out works and HRS, will increase from £4,000 to £15,579 (289%). Historically, the MMO has received more band 2 applications than other bands and these generally require a greater amount of non-statutory engagement than other bands due to the nature and complexity of orders of this type.
- 6.5 The proposal is that band 3 applications, an order which expressly empowers an authority to carry out works where an EIA is not required, will increase from £6,000 to £18,756 (213%).
- 6.6 The proposal is that band 4 applications, an order which expressly empowers an authority to undertake works where an EIA is required, will increase from £10,000 to £35,055 (251%). Though not as frequent as band 2, band 4 generally require a large amount of non-statutory engagement prior to formal application.
- 6.7 The MMO will also offer a discretionary service for non-statutory activities covering activities which the MMO is not explicitly bound to provide by legislation. However, these services will be available at an extra cost of £122 + VAT per hour and could include:
- Advice on informal consultations
 - Comment on a draft harbour order, environmental statement or any other draft document (e.g. Habitats Regulation Assessments) to highlight potential fundamental issues (applicants should seek their own legal advice as the MMO cannot provide such advice)
 - Other advice, engagement and detailed discussion, including but not limited to:

- early information meetings,
- long term objectives or plans,
- speculative enquiries,
- novel and complex applications.

- 6.8 For those who choose not to engage the MMO in the discretionary pre-application service, for non-statutory activities, the MMO will increase the availability and practicality of online guidance and information. This will provide an alternative resource to applicants or potential applicants engaging with the MMO. The online guidance will be to a standard that HO applicants will be able to choose to engage in the paid-for service by exception rather than standard practice. The MMO will seek to work with industry to inform the proposed guidance.
- 6.9 Applicants will continue to benefit from the certainty of a one-off fixed rate payment covering the application, including EIA screening/scoping (where applicable).
- 6.10 In all bands, applicants will benefit from a lower fee than under Option 1 but will have the ability, if they choose, to obtain discretionary services, for non-statutory activity, for a separate charge.
- 6.11 The new fee levels would be applicable to any new application received on or after the implementation date.
- 6.12 There would be no change to the fee due for applications received before the implementation date.
- 6.13 The new provisions for charging for discretionary services would be applicable for all work undertaken by the MMO from the implementation date. This includes ongoing work where the applicant chooses to continue with MMO engagement.

F. Do you have any views on the proposed changes to the fee structure for harbour order applications as set out in option 2?

G. Do you have any views on the proposed level of the fees for harbour order applications as set out in option 2?

H. Do you have any views on the proposed transition to fees for harbour order applications as set out in option 2 (6.11 & 6.12)?

I. Do you have any views on the proposed introduction of a separate charging mechanism for a discretionary service?

J. Do you have any views on the proposed transition to charges for discretionary services as set out in option 2 (6.13)?

7 Implementation

- 7.1 Whilst the increases to the fees enable the MMO to substantially improve its cost recovery arrangements for HO applications and reduce the burden on the taxpayer, the MMO accepts that the increases could have considerable impacts on the sector.
- 7.2 The MMO welcomes views on the ability of smaller ports to accommodate the proposed fees and how this may be mitigated, though recognising that fees are intended to recover the costs to the MMO of providing the harbour orders service rather than a mechanism for redistributing costs across businesses. Therefore, any suggestion of larger ports bearing a larger proportion of the costs in order to subsidise smaller businesses would require discussion with HM Treasury, however it is unlikely this would be supported unless strongly endorsed by the sector.
- 7.3 To enable businesses to adjust to the increases the MMO also welcomes views on how to manage the impact of increasing fees, including, for example:
- Full implementation from day one
 - Phased implementation based on an agreed criteria.
 - Phased approach of incremental increases over a set number of years; for example.

Band	Fee (£)	Option 1 (£)		Option 2 (£)	
		Year 1 – 50%	Year 2 – 100%	Year 1 – 50%	Year 2 – 100%
1	2,000	4,615	7,229	4,340	6,680
2	4,000	10,680	17,360	9,790	15,579
3	6,000	12,791	19,581	12,378	18,756
4	10,000	26,817	43,633	22,528	35,055

- 7.4 The MMO and DfT are looking to explore further amendments to the charging structure in the longer term to enable an hourly charge rather than a fixed fee; this would require an amendment to primary legislation. Your views on this subject would be welcomed.

K. Do you have any views on how the MMO implements the changes to the fees; particularly in relation to smaller ports and harbours?

L. Do you have any views or suggestions on how the MMO may mitigate the impacts of increasing fees; particularly in relation to smaller ports and harbours?

M. Do you have any views on amendments to the future charging structure to allow alternatives to the current fixed fee at the point of application?

8 What happens next?

8.1 The closing date for this consultation is midnight on **10th September 2019**.

8.2 Responses received by that date will be analysed and taken into account by Defra and DfT Ministers in their consideration of the proposals for amending the harbour orders fees. The consultation responses will be published online. If you do not wish for your response to be published, please make that clear in your reply (see notes at 2.9 and 2.10).

N. We have asked you a number of specific questions throughout this document. If you have any other views on the subject of this consultation, which have not been addressed, you are welcome to provide us with these views in your response.

O. We would also welcome your views on any other improvements you would like to see to the service.