

**MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964**

**PROPOSED LITTLEHAMPTON HARBOUR REVISION
ORDER 2014**

**STATEMENT IN SUPPORT OF APPLICATION BY THE
LITTLEHAMPTON HARBOUR BOARD**

Introduction

- 1) This statement relates to the application by the Littlehampton Harbour Board (“the Board”) for the proposed Littlehampton Harbour Revision Order (“the HRO”). The Board are the statutory harbour authority for Littlehampton Harbour.
- 2) The application, made in a letter to the Marine Management Organisation (“the MMO”) of today’s date, is accompanied by:
 - a) A draft of the proposed HRO;
 - b) This statement;
 - c) The fee for the application, payable to the MMO, in the sum of £4,000.00.
- 3) The application is for a harbour revision order to be made under the powers conferred by the Secretary State for Transport by section 14 of the Harbours Act 1964 (and delegated to the MMO with effect from 1st April 2010 by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674)).
- 4) The HRO would modernise and extend existing powers vested in the Board by existing harbour legislation. In particular, the HRO would confer powers on the Board to give general directions to vessels using Littlehampton Harbour, together with powers exercisable by the harbour master appointed by the Board to give special directions. These powers are required to support the effective management of the vessels using Littlehampton Harbour, as recommended in the Port Marine Safety Code.

Littlehampton Harbour

- 5) Established by the Littlehampton Harbour and Arun Drainage Outfall Act of 1927 Littlehampton harbour is a small tidal port at the mouth of the River Arun in West Sussex. The harbour handles approximately 30,000 tons per annum of dry bulk cargo for vessels of up to around 2000GT; primarily for Lafarge Tarmac as the sole commercial operator in the port. It also acts as home port for a small inshore fishing fleet of around 15 vessels and is the operating base for a similar sized and nationally renowned charter sea angling fleet. In addition to this commercial activity the harbour hosts significant leisure sailing activity in and around two independent yachts clubs and a marina.

The Port Marine Safety Code

- 6) As the harbour authority for Littlehampton Harbour the Port Marine Safety Code published by the Department for Transport in October 2009 (“the Code”) applies to the Board as well as to all harbour authorities in the UK that have statutory powers and duties. The Introduction to the Code explains that the Code *“establishes the principle of a national standard for every aspect of port marine safety, and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment. It applies to port marine operations the well-established principles of risk assessment and safety management systems. It provides a measure by which harbour authorities can be accountable for the legal*

powers and duties which they have to run their harbours safely and help to discharge their obligations effectively”.

- 7) The Code identifies a number of matters which harbour authorities must do in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation. In particular, paragraph 3.4 of the Code states *“Harbour Authorities would be well advised to secure powers of general direction to support the effective management of vessels in their harbour waters, if they do not have them already”.*

The Harbours Act 1964

- 8) Section 14 of the Harbours Act 1964 (“the 1964 Act”) confers powers which have been devolved to the MMO (see paragraph 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 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.

- 12) Section 14 of the 1964 Act requires that written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and that the MMO must be:

“satisfied that the making of the order is desirable in the interest 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”.

The matters set out in Schedule 2 to the 1964 Act include, in particular, at paragraph 4: *“Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make byelaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above”.*

- 13) 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 Secretary of State under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

- 14) The application for the HRO under section 14 of the Act of 1964 meets the conditions set out therein. 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 and 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:

- The application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour: and
- 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.

Need and justification for HRO

- 15) The prominence of Littlehampton Harbour as a yachting venue, as well as its use by fishing vessels and other commercial vessels has already been described. To assist in the management of the harbour in compliance with the Code, the Board is seeking the power to issue general directions, and to update the harbour master's powers to issue special directions, as recommended by the Code. These powers are required in the interests of providing safe navigation for a wide variety of vessels within a very busy harbour.
- 16) The Board consider it necessary to obtain powers of general direction in order to achieve the purposes set out in section 14(b) of the 1964 Act. Such powers are well precedented in harbour legislation and on the 28th May 2012, the Secretary of State authorised the making of an HRO containing such powers in relation to Poole Harbour.
- 17) In the case of Poole Harbour, the applicants were of the opinion that an express adjudication process was not necessary and the Secretary of State declined to override that view. In the case of this application, however, the Board have decided to voluntarily adopt an adjudication process, and the process contained in article 4 has been previously agreed in a series of consultations with the Royal Yachting Association. It will be recalled that this was the position taken by Cowes Harbour Commissioners, and an adjudication process is contained within their recently authorised HRO.
- 18) In terms of the precise scope of general directions, it will be seen that article 3(1) would allow the Board to give or amend directions *"...for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons and the protection of property, flora and fauna in the harbour"*. Such a scope is entirely consistent with the environmental duties placed on harbour authorities by virtue of section 48A of the 1964 Act and paragraph 16A of Schedule 2 to that Act, which enables an HRO to confer powers for environmental conservation within the harbour. This approach has recently been approved by the Secretary of State in the case of Poole Harbour.

Prior Consultation

- 19) In December 2012 the Board initiated the process of consulting with principal stakeholder organisations (including the RYA) with respect to the draft HRO

As part of the consultation process LHB has received feedback from the individual stakeholders. In response to the feedback received, LHB have made amendments to the HRO

In particular Natural England made reference that it needed to be consulted if a public body proposed to carry out an operation that may damage an interest feature of SSSI. The Angmering Park Estate ensured that the HRO emphasized the limitation of the Board's power and that the Crown Estate is not the owner of the bed of the river. It also offered to make available free copies of the byelaws from their Park Estate Office. The Royal Yachting Association's input was to ensure that cross reference between the Articles was correct and other syntax and formatting improvement. It further amended some of the definitions and annotated that copies of the General Directions were freely available to harbour users. Arun District Council continued with various syntax and formatting suggestions and that service of notices should be by First Class Post. Littlehampton Town Council and the Environment Agency were in principal satisfied with the draft HRO.

28 April 2014

On the date to be confirmed the Board resolved to submit an application for a harbour revision order in its current form.

date

Lester Aldridge LLP

For and on behalf of the Littlehampton Harbour Board