

**MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964**

**PROPOSED LYMINGTON HARBOUR REVISION ORDER
2013**

**STATEMENT IN SUPPORT OF APPLICATION BY THE
LYMINGTON HARBOUR COMMISSIONERS**

Introduction

- 1) This statement relates to the application by the Lymington Harbour Commissioners (“the Commissioners”) for the proposed Lymington Harbour Revision Order (“the HRO”). The Commissioners are the statutory harbour authority for Lymington 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) Draft General Directions; and
 - d) 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 Commissioners by existing harbour legislation. In particular, the HRO would confer powers on the Commissioners to give general directions to vessels using Lymington Harbour, together with powers exercisable by the harbour master appointed by the Commissioners to give special directions. These powers are required to support the effective management of the vessels using Lymington Harbour, as recommended in the Port Marine Safety Code.

Lymington Harbour

- 5) The harbour accommodates 1,530 permanent berths for private vessels. In addition, it is estimated that approximately 15,000 boats visit the harbour each year.
- 6) There is a small but important commercial fishing fleet
- 7) Lymington is the mainland terminal for a strategically important ferry service to Yarmouth on the Isle of Wight, operated by Wightlink. In 2012, approximately 17,000 sailings per annum were provided; carrying approximately 1.2m passengers and 378,000 vehicles.
- 8) The sheltered waters of the harbour are extensively used for recreation by the local community including members of the two sailing clubs which are leading UK centres of excellence and have trained thousands of 8 to 14 year old children from the community many of whom have gone on to elite success at national, international and Olympic competitions. Other community organisations that regularly use the harbour include Lymington Amateur Rowing Club, 9th Lymington Sea Scout Group, and Lymington Sailability which offers sailing to people with a wide range of disabilities.

The Port Marine Safety Code

- 9) As the harbour authority for Lymington Harbour the Port Marine Safety Code published by the Department for Transport in October 2009 ("the Code") applies to the Commissioners 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"*
- 10) 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

- 11) 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 Lymington Harbour as an international yachting venue, as well as its use by ferries and other commercial vessels has already been described. To assist in the management of the harbour in compliance with the Code, the Commissioners are 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 Commissioners 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 preceded in harbour legislation and, as recently as 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 Commissioners have decided to voluntarily adopt an adjudication process, and the process contained in article 14 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. A similar adjudication process is also envisaged by the Marine Navigation Act 2013.
- 18) In terms of the precise scope of general directions, it will be seen that article 13(1) would allow the Commissioners 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. In the case of Lymington Harbour, the presence of Natura 2000 sites in the Lymington Estuary means that it is particularly important for the Commissioners to give general directions in support of their conservation duties

Prior Consultation

- 19)** In November 2012, Lymington Harbour Commissioners (LHC) wrote to the Lymington Harbour Advisory Group which formally represents stakeholder interests in the harbour together with principal stakeholder organisations (including the RYA) to consult them on the draft HRO and the draft General Directions that LHC were seeking to introduce once the HRO was made. The consultation was also published on LHC's website and was undertaken to the following published timetable.

Period	Action
26/11/12	Issue Consultation Papers
26/11/12 to 28/02/13	Consultation period including meetings with major organisations.
28/02/13	Deadline for consultation responses to LHAG
01/03/2013 to 31/03/13	LHAG formulate consultation response to LHC
01/04/2013 to 30/04/13	LHC to consider feedback on HRO and finalise HRO for application to MMO in May 2013.
01/04/2013 to 30/04/13	LHC to consider feedback on General Directions

As part of the consultation process LHC had several meetings with individual stakeholders and attended two formal meetings of the Lymington Harbour Advisory group to receive their feedback. In response to some of the feedback received, LHC have made amendments to the HRO and draft General Directions that are likely to be given in the event of the HRO being made. However, at this stage, the purpose of the draft General Directions was to give consultees an indication of the activities that are likely to be regulated in this way. On the 13th May 2013 the Commissioners resolved to submit an application for a harbour revision order in its current form.

17th June 2013

Lester Aldridge LLP

For and on behalf of the Lymington Harbour Commissioners