



Marine Management Organisation

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Darren White
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Our reference: DC10052

12 August 2016

Dear Mr White,

The Harbours Act 1964 DC10052 – The Port of Tyne Harbour Revision Order 2016

1. The Marine Management Organisation (“the MMO”) informs you that consideration has been given to the application for the Port of Tyne Harbour Revision Order 2016 (“the Order”) for which you applied on behalf of the Port of Tyne Authority (“the applicant”), under Section 14 of the Harbours Act 1964 (“the Act”) on 5 May 2016.

Summary of Decision

2. The MMO has authorised the making of the Order with amendments and modifications not affecting the character of the Order which it considers necessary and appropriate.
3. The Order revokes requirements for members of the Port of Tyne Authority to vacate their office on 30 June following their seventieth birthday and revokes the restriction on a person aged 64 or over from being appointed a member for the first time.
4. The Order also provides substitutions for the Port of Tyne Authority (Constitution) Revision Order 1974 relating to the appointment of casual vacancies by the Secretary of State: The person filling a casual vacancy shall do so for the remainder of the term for which the member replaced was appointed, or for such other period (not exceeding three years) as the Secretary of State may specify.
5. The proposed Order does not constitute or authorise a project for the purposes of Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and accordingly an environmental statement was not required.

Context

6. The applicant is the statutory harbour authority for the Port of Tyne (“the Port”) and operates under Acts and Orders 1968 to 2008.



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7. The applicant is responsible for the maintenance, management and improvement of the Port.
8. The Port of Tyne is situated in the north east of England and is one of the UK's largest Trust Ports. It is also one of the UK's major deep sea ports and a vital trading gateway to Europe and beyond.
9. The proposed HRO would make minor amendments to certain provisions which apply in respect of the appointment of members of the Authority which it is considered would be conducive to the efficient and economical operation, maintenance, management and improvement of the Port of Tyne.
10. The Authority was constituted under the Port of Tyne Reorganisation Scheme 1967 Confirmation Order ("the 1967 Scheme"). The 1967 Scheme made provision with respect to the procedure of, and other incidental matters concerning, the Authority set out in Schedule 1. In particular:
 - Paragraph 7 of Schedule 1 to the 1967 Scheme provides that a member of the Authority must vacate their office on 30 June following their seventieth birthday; and
 - Paragraph 9 of Schedule 1 to the 1967 Scheme prevents a person who has attained the age of 64 from being appointed a member of the Authority for the first time.
11. The Department for Transport's Guide to Modernising Trust Ports (second edition 2009) ("the Guide") chapter 3.6.6 states that:

"there is no age limit or minimum requirement on board membership. The overriding requirement is for the board to be optimally effective, and this is most likely to be achieved with a diverse range of members, in which age should not be a relevant factor, but in which a breadth and depth of skills and experience should be paramount".
12. The Guide also states in chapter 3.6. that:

"trust ports boards should contain an appropriate balance of skills, competencies and experience to control the port effectively and provide it with leadership, motivation and strategic direction"; and in chapter 3.6.2 that "relevant life experience and track record should be considered as important as skills obtained through a conventional career path and professional qualifications".
13. The Equality Act 2010 came into force on 1 October 2010 and expanded the scope of the Public Sector Equality Duty from disability, race and sex to cover age, among other categories.
14. As a trust port, the Authority is not a public body to which the Equality Act applies, but it does serve to demonstrate public policy in respect of age discrimination.
15. The applicant considers that, in light of the Equality Act, the provisions of the 1967 Scheme referenced above (9) are not only outmoded but conflict with specific Government guidance applying to the Authority.

16. The Port of Tyne Authority (Constitution) Revision Order 1974 required that all members of the Authority (other than those appointed to fill a casual vacancy) must be appointed for a term ending 30 June. This was unduly prescriptive and gave rise to difficulties in practice on the occasion where there were delays in appointment.
17. It would conduce to the efficient functioning of the harbour for the Secretary of State to have the flexibility to appoint members for a maximum period of three years expiring at any time.

Application procedure

18. On 5 May 2016 an application for the Order was submitted to the MMO on behalf of the applicant.
19. Notice of the application for the Order was advertised in the London Gazette on 5 May 2016 and in the Journal (Newcastle) 5 May 2016 and 12 May 2016.
20. The MMO consulted with:
 - British Ports Association
 - Chamber of Shipping
 - Department for Transport
 - Maritime and Coastguard Agency
 - MMO (North Shields) Office
 - Royal Yachting Association
 - Trinity House
 - Gateshead Council
 - Newcastle City Council
 - North Tyneside Council
 - South Tyneside Council
21. Ten responses were received from those consulted by the MMO, but none contained any representations relating to the merits of the Order. Two responses were in full support of making the Order.

MMO consideration

22. Section 14(1) of the Act provides for an order to be made under this section (“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 set out in Schedule 2 to the Act.
23. By virtue of section 14(2)(a) a harbour revision order may not be made in relation to a harbour unless the MMO is satisfied that an appropriate written application has been made by the authority engaged in improving, maintaining or managing it, or by a person appearing to it to have a substantial interest or body representative of persons appearing to it to have such an interest.
24. By virtue of section 14(2)(b) a harbour revision order shall not be made in relation to a harbour unless the MMO is 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 of facilitating the efficient and economical transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

MMO's decision

25. The MMO is satisfied that the Order meets the requirements of section 14(1) and 14(2)(a) of the Act.
26. The MMO is satisfied for the reasons set out by the applicant in their statement of support, and summarised above, that the making of the Order is desirable for the purposes of section 14(2)(b) of the Act and should be made.
27. The MMO authorises the making of the Order with amendments and modifications which it considers necessary and appropriate but not substantially affecting the character of the Order.

Challenges to decisions

28. Information on the right to challenge this decision is set out in the Annex to this letter.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'JB', with a stylized flourish extending from the end.

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Marine Licensing Case Officer

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Annex

Right to challenge decisions

Right to challenge orders made under sections 14 and 16 of the Harbours Act 1964

Any person who desires to question the making of the Order on the ground that there was no power to make the Order or that a requirement of the Harbours Act 1964 was not complied with in relation to the Order, may within 6 weeks from the date on which the Order becomes operative make an application for the purpose to the High Court or the Court of Session, as the case may be.

A person who thinks they may have grounds for challenging the decision to make the Order is advised to seek legal advice before taking any action.