

MARINE MANAGEMENT ORGANISATION

HARBOURS ACT 1964

**PROPOSED NEWHAVEN HARBOUR REVISION
ORDER 2015**

**STATEMENT IN SUPPORT OF APPLICATION BY
NEWHAVEN PORT AND PROPERTIES LIMITED**

1. Introduction

- 1.1 This statement relates to the application by the Newhaven Port and Properties Limited (“the Company”) for the proposed Newhaven Harbour Revision Order (“the HRO”). The Company is the statutory harbour authority for Newhaven Harbour by virtue of the Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991.
- 1.2 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.
- 1.3 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)).
- 1.4 The HRO would modernise and extend existing powers vested in the Company by existing harbour legislation. In particular, the HRO would confer powers on the Company to give general directions to vessels using Newhaven Harbour, together with powers exercisable by the harbour master appointed by the Company to give special directions. These powers are required to support the effective management of the vessels using Newhaven Harbour, as recommended in the Port Marine Safety Code.

2. Newhaven Harbour

In 1984, the port was privatised, and purchased by *Sea Containers Ltd* who maintained the name Sealink as the statutory harbour authority until 1991 when Sealink British Ferries was sold to the Swedish company Stena. Under *The Sealink (Transfer of Newhaven Harbour) Harbour Revision Order 1991*, the powers of the Harbour Authority passed to *Newhaven Port & Properties Ltd*, a division of Sea Containers. In June 2001, Sea Containers sold Newhaven to the present day French parent body, SEML, but *Newhaven Port & Properties Ltd*. Is a UK registered company and is the Statutory Harbour Authority.

In 2013, the Port statistics were as follows:-

Ferry = 700 calls with a throughput of 280K pax, 85K cars, 40K freight vehicles (600K tonnes).

Commercial = 70 vessels with a throughput of 170K tonnes of scrap, stone, biomass and aggregates.

Passenger = 2 cruise ship calls.

Fishing = 100 vessels visited to land catch and there were 30 registered resident vessels.

Leisure = 500 resident vessels up to 15m LOA and 360 vessels visited.

Other = 120 vessels visited consisting of dredgers, tugs, survey, workboats, barges and UKBA.

The Port has been chosen as the Eon Rampion Windfarm Construction Project Management Base and the Operations & Maintenance Base which will create an

increase in vessel traffic over the life of the windfarm, particularly during the construction phase.

The Port has submitted a planning application and Marine Licence application for a new 300m multi-use berth at the south of the existing port working area to facilitate extra traffic and to expand on the existing commercial activities. Basically, the Port wishes to expand its operations for the future.

3. The Harbours Act 1964

3.1 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.

3.2 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”.

3.3 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”.

3.4 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.

3.5 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:

3.5.1 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.

3.5.2 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.

4. Need and justification for HRO

- 4.1** The importance of Newhaven Harbour as a ferry port, yachting venue, as well as its use by fishing vessels and other commercial vessels has already been described. The proposed HRO would confer further modernising powers on the Company considered conducive to the efficient and economical operation, improvement, maintenance or management of the Port of Newhaven.
- 4.2** An explanation of, and the need for, each substantive article in the HRO is set out below together with the relevant power in the Harbours Act 1964 by virtue of which the article may be included in the HRO. By way of illustration only, examples of how the powers may be exercised are described below. These examples are not intended to be exhaustive of the ways in which the powers may lawfully be exercised.
- 4.3** Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO. The Port is described in the HRO as “the harbour” so the expressions are used interchangeably below.

4.4 Article 3 of the Order – The Harbour Limits

- 4.4.1** This article defines the harbour limits by reference to coordinates and modern points of reference to landward. The seaward boundaries have been extended so as to ensure that they relate operationally to the pilotage areas for the harbour. Provision is also made for the inclusion of a harbour map, although it is further provided that in the event of a discrepancy, the written descriptive will prevail. The article also includes within the harbour limits any harbour premises (as defined) to the extent to which they are not situated within the written description of the harbour.

4.4.2 Relevant Provision of Schedule 2 to the 1964 Act

Article 3 is authorised by paragraph 6:

“Settling (either for all purposes or for limited purposes) the limits within which the authority are to have jurisdiction or altering (either for all purposes or limited purposes) such limits as previously settled”

4.4.3 Need for Provision

As stated, the harbour limits are more accurately defined by the use of coordinates to seaward and to modern points of reference to landward.

The present Harbour Limits have been in existence since 1878, with the southern boundary only 100m south of the harbour entrance. Under the Pilotage Act 1987, the Pilotage District is the same as the Harbour Limits. Despite that the Pilot Boarding area is and has traditionally been 1 to 2 nautical miles from the entrance to facilitate a safe and efficient Master-Pilot Information exchange as now prescribed in the Port Marine Safety Code. The Harbour Limits and the Pilotage District therefore need to be increased to cater for the above in the interest of maritime and environmental safety.

Ferries and large commercial vessels need a safe approach to the harbour entrance without encountering obstructions, fishing nets and anchored vessels (similarly for departures). At the present time the Harbour Authority has no legal jurisdiction over the approaches to the harbour and relies on the goodwill and common sense of the local fishing, recreational and commercial sectors. However, there are frequently occasions whereby ferries and commercial vessels under pilotage have to take evasive action on

their final approaches to the harbour (and departures). By extending the harbour limits as proposed, the harbour authority will have more control over the approaches in the interest of maritime safety.

The harbour authority seeks more control over where vessels anchor and what operations occur whilst at anchor, especially with the anticipated increase in activity connected with the Rampion Windfarm.

4.5 Part 2 of the Order – Harbour Regulation

4.5.1 Part 2 empowers the Company to give or amend general directions '*...for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons, protection of property, and the prevention or amelioration of environmental harm in the harbour*'.

Such a direction may apply to:

- a. All vessels or to a class or type of vessel; or
- b. To persons designated in the direction; or
- c. To the whole of the harbour or to a part; or
- d. At all times or at certain times or at certain states of the tide.

The article also allows the Company to revoke an existing direction.

Article 5 then goes on to set out a detailed procedure which must be followed by the Company before a general direction can take effect, including an independent adjudication process in the event of designated consultees maintaining an objection to a proposed general direction.

Article 6 prescribes the public notice that must be given prior to the general direction taking effect.

Article 7 provides the harbour master with a power of special direction. Unlike a general direction, a special direction is intended to address specific circumstances where individuals or vessels are required to conduct themselves in such a manner so as to comply with a general direction or bylaw, or to address any of the circumstances set out in Article 7(1).

Article 8 renders a failure to comply with a general or special direction an offence punishable on summary conviction to a fine not exceeding level 4 on the standard scale. This fine level is in conformity with similar provisions in the Portland HRO 1997, the Yarmouth (Isle of Wight) HRO 2011, the Poole HRO 2012 and the Littlehampton HRO 2014. There is also a power in Article 9 that allows the harbour master to carry out a special direction in the event of non-compliance. Paragraph (2) ensures that the provision is in compliance with powers of entry guidance. Article 10 makes it clear that the giving of a general or special direction in respect of a vessel does not diminish the responsibility of the master of the vessel in respect of which the direction is given.

Article 11 sets out the purposes for which byelaws can be made by the company and the procedure for bringing them into force.

There is a separate power of revocation in relation to existing byelaws under article 12, where the byelaws revoking existing byelaws do not themselves need to be confirmed by the Secretary of State. As it is the Company's intention to replace all existing byelaws with a modern set of general directions, article 12 would be used by the Company in order to achieve this objective once a comprehensive set of general directions was in place.

4.5.2 Relevant Provision of Schedule 2 to the 1964 Act

Part 2 is authorised by paragraph 4:

'Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above'.

The purposes referred to are set out in paragraph 3. These are:

- a. *Improving, maintaining or managing the harbour;*
- b. *Marking or lighting the harbour, raising wrecks therein or otherwise making safety navigation thereof; or*
- c. *Regulating the carrying on by others of activities relating to the harbour or of activities on harbour land'.*

4.5.3 Need for Provision

As the harbour authority for Newhaven Harbour, the Port Marine Safety Code published by the Department for Transport in October 2009 ("the Code") applies to the Company 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"*.

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 prominence of Newhaven Harbour as a ferry terminal, as well as its use by recreational vessels, fishing vessels and other commercial vessels and its desire to expand operations into the future, particularly in relation to Rampion, has already been described. To assist in the management of the harbour in compliance with the Code, the Company 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.

The Company consider it necessary to obtain powers of general direction in order to achieve the purposes set out in section 14(2)(b) of the 1964 Act. Such powers are well precedented in harbour legislation. For example, on the 28th May 2012, the Secretary of State authorised the making of an HRO containing such powers in relation to Poole Harbour.

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 Company has decided to voluntarily adopt an adjudication process, and the process contained in article 4 has been previously agreed in a series of detailed consultations with the Royal Yachting Association. It will be recalled that this was the position taken by Cowes and Lymington Harbour Commissioners, and an adjudication process is contained within their recently authorised HRO's.

In terms of the precise scope of general directions, it will be seen that article 4(1) would allow the Company 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, and the prevention of environmental harm 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, and by the MMO in the case of Cowes and Lymington harbours.

The Company has previously considered the alternative option of seeking designation under sections 40A-40D of the Harbours Act 1964. It has, however, rejected this option for three main reasons:

- There is a need to regulate vessels that do not fall within the definition of "Ships", such as a personal watercraft;
- The intention is to replace existing byelaws with a comprehensive set of general directions. This would not be possible in the case of harbour directions as they cannot be made in respect of individuals and cannot therefore regulate on-shore activities; and
- There is no ability to bring Harbour Directions into force in an emergency, without potentially going through the full adjudication process. This means that in a fast-moving operational environment, the emergency could have passed before the direction came into force. An example would be the introduction temporary new shipping routes to avoid a hazard in the harbour.

These shortcomings in relation to Harbour Directions are recognised in the relevant Code of Conduct, which has been issued by the National Directions Panel as supplementary guidance.

The adjudication process set out in Part 2 of the draft Order has been the subject of detailed discussions with the Royal Yachting Association. As a consequence, recently made HRO's such as Lymington and Cowes contained these provisions and were not

the subject of objections by the RYA. There are therefore very strong precedents for the provisions set out in Part 2 of the draft Order.

It is unlikely that the power to make byelaws under article 11 would be used where the giving of a general direction under article 4 is available, given that the procedure for giving general directions under article 5 does not require confirmation by the Secretary of State. However, because the Company does not currently have a modern set of byelaw making powers it is considered that such enabling legislation should be put in place so that the Company has an alternative to general directions in the event of the law changing at some stage in the future. For example, it is possible that future public legislation could restrict in some way the power of a harbour authority to give general directions. Without the necessary enabling powers already in place the Company would then have to seek another harbour revision order in order to obtain such powers, with the risk that there would be an intervening period when the harbour would effectively be incapable of proper regulation. While it is accepted that other harbour authorities have sought powers of general direction without also seeking powers to make byelaws, this would usually be in circumstances where the harbour authority already had modern byelaw-making powers in its existing harbour legislation.

4.6 Part 3 of the Order – Commercial Workboats

4.6.1 Article 13 regulates the operation of commercial workboat services in the harbour. The operation of such a service without a licence would be a criminal offence. The level of the fine is inconformity with equivalent provisions in other harbour legislation relating to water taxis, such as the Yarmouth (Isle of Wight) Harbour Revision Order 2011 and the Lymington Harbour Revision Order 2014.

Article 14 empowers the Company to grant licences allowing persons to operate a commercial workboat service in the harbour.

The Company may refrain from granting a licence if in its reasonable opinion:

- a. the licence would give rise to a risk of congestion, obstruction or danger to navigation;
- b. an adequate service licenced under this article is already being provided; or
- c. the applicant is unsuitable to hold the licence.

Article 15 empowers the Company to grant licences subject to terms and conditions it thinks fit, and then sets out example conditions. It also provides that the Company is free to determine in the licence the length of time the licence is to run for, details about what an application for a licence to the Company must contain, that the Company must give notice of their decision to the applicant, that the Company is deemed to have refused the application if no decision is made within 3 months of submission, that the Company may charge a reasonable fee for granting the licence, that the Company must give written reasons for refusing a licence, and that the Company must give written reasons for granting a licence subject to terms and conditions or modifications.

Article 16 gives applicants the right to appeal if Company refuses to grant the licence, the licence is granted subject to terms and conditions that the applicant considers unsatisfactory or the licence is granted subject to modifications that are considered to be unsatisfactory.

Article 17 describes the procedure to be taken if an applicant wishes to appeal.

4.6.2 Relevant Provision of Schedule 2 to the 1964 Act

Part 3 is authorised by paragraph 4:

'Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above.'

The purposes referred to are set out in paragraph 3. These are:

- a. *Improving, maintaining or managing the harbour;*
- b. *Marking or lighting the harbour, raising wrecks therein or otherwise making safety navigation thereof; or*
- c. *Regulating the carrying on by others of activities relating to the harbour or of activities on harbour land'.*

4.6.3 Need for Provision

The proposed licensing of workboats would ensure that all operators of commercial workboats would have to attain minimum safety standards in terms of the vessels being used and the competency of their crews. Without a licensing system it would be difficult for the Harbour Master to check whether those minimum safety standards had been achieved.

The need for regulation of commercial workboats is supported by the Maritime & Coastguard Agency, and a copy of the Agency's letter dated 8th December 2014 is attached at Annexure 1. Briefly, the MCA acknowledges that these provisions help to fulfil the Company's obligations under the Port Marine Safety Code (PMSC) which requires a harbour authority to:

- a. Review and be aware of their existing powers based on local and national legislation;
- b. Comply with the duties and powers under existing legislation, as appropriate.

Contained within the PMSC is a guide to good practice, and includes the following guidance regarding the regulation of vessels:

"10.2.3 Local legislation may empower harbour authorities to register, inspect and licence commercially operated port craft. Where this is not the case, the authority's risk assessments should show some form of agreement with commercial operators about the maintenance and proper use of those vessels. It may be appropriate for the authority to consider seeking those powers."

The Master and/or crew may not have the proper expertise to operate a commercial workboat. This poses a threat to the navigational safety of those who use the harbour. The recent calls from MAIB, MCA and Industry for Tug Masters to have specific qualifications exemplifies the general consensus that it is necessary for the Company to regulate who may operate commercial workboats.

The need for a licensing system is heightened during the Rampion windfarm construction phase, as there will be increased commercial workboat activity, and the

Harbour Master wishes that all the workboats and crews are certified and safe. This will also be the case for the O&M phase.

5. Part 4 of the Order – Miscellaneous and General

- 5.1** Part 4 sets out the functions and powers of the Company, as well as other relevant rights given to it and others.
- 5.2** Article 18 sets out the general functions given to the Company, the extent to which it may exercise its discretion over the use of such functions, as well as the restrictions placed on its ability to exercise such functions.
- 5.3** Article 19 describes the extent to which the Harbours, Docks and Piers Clauses Act 1847 (“the Act”) is incorporated within this Order. This Act contains provisions relating to the construction, improvement and general operations of harbours, docks and piers, which can be incorporated by subsequent legislation. This Order incorporates all provisions of the Act except for sections 6 to 25, 28, 31, 32, 42, 48, 50, 67, 77 and 83 to 90 of the Act, and while sections 61, 62, 63, 64, 66, 69, 71, 72, 73 and 78 of the Act are incorporated, these are amended by the Order. The provisions that are incorporated relate to rates charged, the collection of rates, the account of rates, powers of the harbour, dock and pier masters, the discharge of cargo and removal of goods, the protection of the harbour, dock and pier, lighthouse and beacons, the harbour and harbour dock police and meters and weighers. The level of fines for each of the offences is in direct conformity with those contained in the Portland Harbour Revision Order 1997
- 5.4** Article 20 gives the Company the power to borrow and to create a charge over or to otherwise encumber the harbour undertaking.
- 5.5** Article 21 gives the Company the power to charge interest to capital in respect of monies raised for one of the purposes set out in paragraph (3).
- 5.6** Article 22 gives the Company temporary borrowing powers, by way of overdraft or otherwise.
- 5.7** Article 23 gives the Company the right to deal with property forming part of the harbour premises, including the right to dispose of property that is surplus to its requirements.
- 5.8** Article 24 gives the Company the power to carry on commercial activities for the benefit of the harbour, and also to become interested in companies carrying on such activities.
- 5.9** Article 25 gives the Company the power within its statutory duties, to provide, maintain, operate and improve harbour services and facilities in and in the vicinity of the harbour, and to take such action as it considers incidental to such provision.
- 5.10** Article 26 gives an authorised officer of the Company the right to board and inspect vessels on producing written authority signed by the Harbour Master, for the purpose of any Act or byelaw relating to the Company or to prevent or attend to any incident that may cause injury/damage to persons, property or the environment. This power can be exercised provided that notice is given to the owner or person appearing in charge of the vessel (except in an emergency). It is therefore compliant with powers of entry guidance.

- 5.11** Article 27 states that if demanded by the Company for the purpose of determining whether landing fees apply, the owner or master of a vessel must provide information relating to the number of persons embarking or disembarking their vessel or relating to the cargo being loaded or unloaded their vessel. The Article also sets out details of the vessels to which it applies, time limits of the owner or master to reply, and the offence of non-compliance. Again, this level of fine is consistent with similar offences in other HRO's.
- 5.12** Article 28 makes it an offence for a person to obstruct or threaten an officer of the Company while performing his functions, or failing to give said officer information he requires without reasonable excuse. Again, this level of fine is consistent with similar offences in other HRO's.
- 5.13** Article 29 states that nothing in this Order prejudices the rights of the Crown
- 5.14** Article 30 states that this Order does not prejudice or derogate from the rights, duties or privileges of Trinity House.
- 5.15** Article 31 gives details of the required form and method of service of notices.
- 5.16** **Relevant Provisions of Schedule 2 to the 1964 Act**

These are set out below. In some cases, the powers sought are authorised by more than one provision.

Articles 18, 19, 21 and 23 are authorised by paragraph 4:

'Imposing or conferring on the authority, for the purpose aforesaid, duties or powers (including powers to make bylaws), either in addition to, or in substitution for, duties or powers imposed or conferred as mentioned in paragraph 3 above'.

The purposes referred to are set out in paragraph 3. These are:

- a. *Improving, maintaining or managing the harbour;*
- b. *Marking or lighting the harbour, raising wrecks therein or otherwise making safety navigation thereof; or*
- c. *Regulating the carrying on by others of activities relating to the harbour or of activities on harbour land'.*

Articles 20, 21 and 22 are authorised by paragraph 10:

"Empowering the authority to borrow money, with or without limitation with respect to the amount that may be borrowed or the time or manner in which the power may be exercised."

Article 23 is authorised by paragraph 9A:

9) *"Empowering the authority to dispose of property vested in them and held for the purposes of the harbour which is no longer required for those purposes."*

To the extent that the power extends to the disposal of property, it is authorised by paragraph 17:

"Any object which, though not falling within any of the foregoing paragraphs, appears to the appropriate Minister to be one the achievement of which will conduce to the efficient functioning of the harbour."

Articles 19, 24, 26 and 29-31 are authorised by paragraph 17 (as set out above)

Articles 19 and 27 are authorised by paragraph 12:

Securing the efficient collection of charges levied by the authority at the harbour and specifying the times at which and the persons by whom such charges are to be paid.

Article 28 is authorised by paragraph 15:

"Securing the welfare of the authority's officers and servants and empowering the authority to provide, or secure the provision of, pensions, gratuities and other like benefits for or in respect of their officers and servants."

6. Need for Provision

- 6.1** Article 18 of this Order sets out the Company's powers and functions, Although more specific powers may be found elsewhere in the Order and in other legislation, it is necessary that the Order contains the Company's more general powers and functions
- 6.2** Article 19 is necessary as The Harbour, Docks and Piers Clauses Act 1864 was enacted to assist legislators of subsequent legislation by providing precedent provisions relating to such harbour activities which are relevant, well-drafted and consistent for their use. The provisions incorporated set out crucial functions for the day-to-day running of the harbour.
- 6.3** Articles 20, 21 and 22 are necessary because the Company may need to borrow (both long and short term) and create a charge over its property in order to raise finance.
- 6.4** Article 23 gives the Company flexibility to structure its property holdings in a way that optimises its ability to manage the harbour undertaking as efficiently as possible. This may include the disposal of property, but only where it can be shown that this is either in order to improve the overall efficiency of the harbour undertaking or where the property in question is surplus to requirements. An example of the former is where it is proposed to vest the freehold in a property owning company, but subject to an immediate leaseback to the Company in respect of all property that continues to be required for the management of the harbour undertaking.
- 6.5** By giving the Company greater flexibility to carry on activities which improve its management of the harbour, as well as being able to form other commercial entities to carry out its functions and powers, Article 24 allows the Company to increase its efficiency and provision of harbour services.
- 6.6** Through Article 25, the power to provide, maintain, operate and improve harbour services and facilities will naturally allow the Company to provide a higher quality of service within the harbour. The ability to take incidental action where it would benefit the performance of this power is conducive to providing a proper service.
- 6.7** The power given to the Company within Article 26 to board and inspect vessels is important to ensure the safety of the harbour. The requirement to serve notice prior to boarding aids the responsible and proportionate use of this power.
- 6.8** The ability of the Company to invoke the power established within Article 27 is necessary so that they may verify whether the correct landing fees are being paid by vessel operators.
- 6.9** The criminalisation of the acts mentioned in Article 28 is a necessary deterrent to promote the safety of the officers as well as to prevent the performance of their duties being hindered

- 6.10** Articles 29 and 30 are necessary to clarify the fact that this Order does not prejudice the rights of the Crown, nor Trinity House, as the latter was created under a Royal Charter
- 6.11** Article 31 sets out the correct method of service of documents in order clarify and achieve effective administration.

Lester Aldridge LLP

For and on behalf of the Newhaven Port and Properties Ltd

Annexure 1



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Coastguard
Agency

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Our ref: MNA 053/010/0620

8th December 2014

To whom it may concern

In submitting a Harbour Revision Order in relation to the licensing of workboats, Newhaven Port Authority are fulfilling their obligations under the Port Marine Safety Code (PMSC) which refers to the following:

In order to comply with the Code, the duty holder on behalf of the harbour authority must:

- 1. Review and be aware of their existing powers based on local and national legislation;*
- 2. Comply with the duties and powers under existing legislation, as appropriate;*

The PMSC associated guide to good practice goes on to provide the following guidance regarding Regulation of craft:

10.2.3. Local legislation may empower harbour authorities to register, inspect and license commercially operated port craft. Where this is not the case, the authority's risk assessments should show some form of agreement with commercial operators about the maintenance and proper use of these vessels. It may be appropriate for the authority to consider seeking these powers.

Yours faithfully

James Clark
Port Liaison Policy Lead
Navigation Safety Branch
Maritime and Coastguard Agency



HM Coastguard



SUPPORTING

**SEA
VISION
UK**

