

MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964 (AS AMENDED)

PROPOSED DART HARBOUR AND
NAVIGATION HARBOUR REVISION ORDER
20[X]

STATEMENT IN SUPPORT OF APPLICATION
FOR ORDER BY:

DART HARBOUR AND NAVIGATION AUTHORITY

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1. INTRODUCTION

- 1.1. This statement relates to the application by the Dart Harbour and Navigation Authority for the proposed Dart Harbour and Navigation Harbour Revision Order 20[X] ("the HRO"). Dart Harbour and Navigation Authority ("the Authority") is the statutory harbour authority for Dart Harbour.
- 1.2. The application, made in a letter to the Marine Management Organisation ("the MMO") dated 16th October 2019 is accompanied by:
 - (a) a copy of the draft HRO;
 - (b) this statement; and
 - (c) the fee for the application, by BACS, in the sum of £4,000.00; and
 - (d) copies of the following legislation:
 - (i) Dart Harbour Improvement Act 1882 ("the 1882 Act");
 - (ii) Dart Harbour and Navigation Act 1975 ("the 1975 Act");
 - (iii) Dart Harbour and Navigation Harbour Revision (Constitution) Order 2002 ("the 2002 Order").
- 1.3. The application is for a harbour revision order to be made under the powers conferred on the Secretary State for Transport by section 14 of the Harbours Act 1964 which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4. The HRO confers modernised powers on the Authority considered conducive to the efficient and economical operation, maintenance, management and improvement of Dart Harbour. In particular, the HRO would confer modern powers on the Authority to give general directions to vessels using Dart Harbour and persons and vehicles using the harbour, together with powers exercisable by the harbour master appointed by the Authority to give special directions to vessels. These powers are required to support the effective management of Dart Harbour, as recommended in the Port Marine Safety Code.

2. DART HARBOUR AND NAVIGATION STATUTORY HARBOUR AUTHORITY

- 2.1. Dart Harbour ("the Harbour") is classed by the Department for Transport ("DfT") as a Trust Port. The Authority, as the Statutory Harbour Authority is governed by its own local legislation collectively known as the Dart Harbour and Navigation Act and Order 1975 and 2002. The Authority is responsible for the administration, maintenance and improvement of the Harbour which is more fully described in section 3 below.
- 2.2. The Authority is also the Competent Harbour Authority under the Pilotage Act 1987.
- 2.3. Within Dart Harbour there are pontoon berths for 20 commercial vessels, along with mainstream mooring buoys for ships with total aggregate length of 300m. Cruise ships with LOA up to 182m are regular visitors to the river and cruise ships up to 260m can be

accommodated in the anchorage. The Harbour offers a large number of other pontoon berths (140) and approximately 720 further moorings managed by the harbour. In addition to moorings managed by the harbour there are over 1300 vessels registered in private moorings and marinas and this will expand with the development of Noss Marina. There are approximately 11800 visiting vessel nights and 20 acts of pilotage per annum. Dart Harbour is home to a small fleet of registered fishing vessels.

- 2.4. In managing the Harbour, the Authority strives to observe industry standards set out in Government guidelines. The Authority is committed to complying with the principles of the various codes and reports applying to the ports and harbours industry, except where not relevant to the Authority's constitution.

3. DART HARBOUR

- 3.1 Dart Harbour is located in Dartmouth and below mean high water springs the harbour extends from the weir at Totnes in the county of Devon southward by the level of high water to an imaginary straight line drawn between the south-western extremity of the Inner Froward Point at the eastern side to the entrance to the river Dart and the eastern extremity of Coombe Point at the western side of that entrance and shall include all creeks, inlets, bays and tributaries as far as the tide shall flow, with the exception of the Boatfloat, Dartmouth and Waterhead Creek, Kingswear.
- 3.2 The area of water currently within the jurisdiction of the Authority is approximately 760 hectares.

4. THE PORT MARINE SAFETY CODE

- 4.1. As the harbour authority for Dart Harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport ("the Code") applies to the Authority as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK. The Executive Summary to the Code explains that:

"The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope."

- 4.2. The Code identifies a number of tasks which harbour authorities should undertake 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 2.5 of the Code states "... harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already". The Authority is seeking

to obtain modern powers of General Direction (covering both vessels and vehicles) to enable it to have a single set of General Directions covering the whole harbour instead of having separate byelaws and directions. Although the Authority has been designated with powers of Harbour Direction, Harbour Directions only apply to 'ships' and therefore are of limited use. The Authority does not currently have powers of General Direction.

5. THE HARBOURS ACT 1964

5.1. Section 14 of the Harbours Act 1964 ("the 1964 Act") confers powers which have been devolved to the MMO (see paragraph 1.3 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 a harbour authority in the exercise and performance of statutory powers and duties for achieving all or any of the objects specified in Schedule 2 of the 1964 Act.

5.2. Section 14(2)(a) of the 1964 Act requires that a written application be made to the MMO by the authority engaged in improving, maintaining or managing the harbour in question and section 14(2)(b) provides that the MMO must be:

"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 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".

And, at paragraph 6:

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

5.3. 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 MMO under paragraph 3(a) of Schedule 3 to the 1964 Act is not required.

5.4. The application for the HRO under section 14 of the 1964 Act meets the conditions set out in that section. 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 or 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:

(i) the application is made upon the written application of a harbour authority engaged in improving, maintaining or managing the harbour; and

(ii) 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.

6. NEED AND JUSTIFICATION FOR HRO

A. GENERAL

6.1 The proposed HRO would modernise the powers of the Authority considered conducive to the efficient and economical operation, improvement, maintenance or management of the Harbour.

6.2 An explanation of, and the need for, each substantive article in the HRO is set out below. Some 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.

B. PART 1: PRELIMINARY

6.3 Articles 1 and 2 are not dealt with below since they are ancillary to the substantive provisions of the HRO.

C. PART 2: Articles 3 – 10: GENERAL DIRECTIONS AND SPECIAL DIRECTION

6.4 Articles 3 to 10 of the Order – General Power of Direction and Special Directions

6.4.1 These articles provide the Authority with modern powers of General Direction and slightly extend the standard power to cover vehicles and directions given for the ease, convenience or safety of harbour operations ashore and extended powers of Special Direction. They also set out the consequences of failing to comply with a General or Special Direction.

6.4.2 The main purpose of the proposed harbour revision order is to provide the Authority with modernised powers of General Direction. The Port Marine Safety Code, advises at paragraph 2.5 of Chapter 2 that:

“In particular, harbour authorities would be well advised to secure powers of general direction or harbour direction to support the effective management of vessels in their harbour waters if they do not have them already.”

6.4.3 The Authority does have powers of Harbour Direction. However, these powers only apply to ‘Ships’ and as such personal watercraft such as jet bikes and other similar craft may not be bound by any Harbour Directions that the Authority may bring into force. Harbour Directions also cannot be exercised in an emergency. In addition, it means that the Authority would have to keep in place byelaws and harbour directions, which can be confusing for harbour users.

6.4.4 Therefore, in line with the Port Marine Safety Code, the Authority is applying for a modernised power of General Direction that will enable the Authority to repeal its existing byelaws and instead have in place a single set of General Directions. In line with best

practice, article 4 of the proposed order provides a statutory right for ‘designated consultees’ to be consulted about proposed General Directions (see article 4(1)(a) and (b)).

- 6.4.5 Powers of General Direction are required by the Authority, in part because it hosts the largest standing annual maritime event in the UK outside the Solent, the Port of Dartmouth Royal Regatta. Because Harbour Directions only apply to Ships (and cannot be exercised in an emergency) and Byelaws can take in excess of 12 months to update, the Authority requires a modern and time efficient enforcement powers enabling the risks associated with this event (and other events run at the harbour) to be managed more efficiently and economically. As explained above, the scope of the General Directions is such that all potential identified risks could be managed under them and in emergency situations, temporary General Directions could be issued. Thereby significantly increasing safety within the harbour.
- 6.4.6 As set out at paragraph 2.3 above, large Cruise Ships regularly visit the harbour and the Authority would welcome further increases in the number of calls by such Ships. Powers of General Direction would assist in managing such calls safely and efficiently, both in terms of navigation and the large numbers of passengers that embark and disembark such Ships. Ship visits during large events such as the Regatta are a challenge and in 2020, the draw of the Mayflower 400 celebrations, are expected to result in a particularly large event.
- 6.4.7 The proposed harbour revision order itself, only grants the power to make General Directions. This means that any future exercise of this power will be exercised in accordance with article 4. Representations received from designated consultees will be considered by the Authority and if they object to proposed General Directions and those concerns are unable to be resolved, there is a statutory adjudication process contained in article 4. The process contained in article 4 is likely to be acceptable to the Royal Yachting Association as a similar adjudication process is contained within the Cowes Harbour Revision Order 2012.
- 6.4.8 In terms of the precise scope of General Directions, it will be seen that article 3(1) would allow the Commissioners to give or amend directions “...for the purpose of promoting or securing directions conducive to the ease, convenience or safety of navigation, the safety of persons, the protection of property, flora and fauna and the ease, convenience and safety of harbour operations ashore, within the harbour”. The “harbour” is defined under section 2(1) of the Act of 1975, with its limits set out in section 38. It is important to note that these limits do not extend above mean high water springs. So, in respect of any future exercise of powers of general direction, the General Directions will only apply seaward of the mean high water springs mark. Nevertheless, the scope of the proposed General Directions is appropriate because vehicles are known to utilise the foreshore within the harbour and harbour operations above mean low water also need to be controlled.
- 6.4.9 In addition, the scope is 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 a harbour revision order to confer powers for environmental conservation within the harbour.

D. PART 3: Articles 11 - 15: Miscellaneous

6.5 Articles 11 and 12 of the Order – Savings

- 6.5.1 These articles contain standard saving provisions for Trinity House and the Crown.

6.6 Article 13 – Notices

6.6.1 This article has been included at the request of the Marine Management Organisation. It sets out how notices required under the Order are served.

6.7 Article 14 - Amendments to the Act of 1975

6.7.1 The definition of “Vessel” in the 1975 Act and in respect of the incorporation of the Harbour Docks and Piers Clauses Act 1847, has been amended to replace it with the definition of vessel contained in article 2(1) the proposed harbour revision order. This ensures that a consistent, modern definition of vessel (that covers personal watercraft such as jet bikes) applies to the Authority’s powers and to aid the Authority in complying with the Port Marine Safety Code.

6.7.2 The level of fine in section 48 of the 1975 Act (obstruction of harbour master and others) has been updated to increase it to a level 3 fine. This level of fine is required firstly to ensure that the harbour master and other officers and employees of the Authority are not obstructed in the exercise of their duties. Interference with such exercise could have serious consequences, including safety risks to persons, property and the environment. Secondly, byelaw 94 of the Dart Harbour and Navigation Byelaws 1998 already imposes a level 3 fine for ‘Obstruction of officers and employees of the authority’. However, it is the intention of the Authority to repeal these byelaws following a positive determination of this Harbour Revision Order application and introduction of General Directions. As such it is considered that a level 3 fine is justified and that it is sensible to increase the level of fine in the 1975 Act, to reflect the fine level in the byelaw that will be repealed.

6.8 Article 15 and Schedule 1 – Repeal

6.8.1 Article 15 and Schedule 1 repeal the whole of the Dartmouth Harbour Improvement Act 1882 (in so far as it is not already repealed). It is not clear at this time whether this Act is or is not still in force, hence it’s repeal (in so far as not already repealed) to remove this uncertainty. With the establishment of the Dart Harbour and Navigation Authority under the 1975 Act and the dissolution of the Dart Harbour Commissioners under section 22(3) of the 1975 Act, the provisions of the 1882 Act are obsolete in any event.

7. COMPLIANCE WITH UK MARINE POLICY STATEMENT, SOUTH MARINE PLAN AND DRAFT SOUTH WEST MARINE PLAN

7.1 Dart Harbour is situated within the the South Marine Plan inshore area and in / immediately adjacent to the draft South West Marine Plan inshore area (the boundary between the two plans is the West Bank of the River Dart).

7.2 The South Inshore and Offshore Marine Plan has already been adopted. The latest iteration of the draft South West Inshore and South West Offshore Marine Plan was published for consultation in January 2020. Once published as a Consultation Draft, Marine Plans become a material consideration and as such, although the draft South West Inshore and South West Offshore Marine Plan is not yet adopted, it is considered in this Statement of Support in addition to the UK Marine Policy Statement and the South Inshore and Offshore Marine Plan.

7.3 The proposed HRO is a relatively short, non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Authority's existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of Dart Harbour. This modernisation of powers relates to the Authority's enforcement activities. The modernisation, amends the process by which such enforcement provisions can be made, amended and repealed (General Directions instead of byelaws). As such, it is expected that the effects of the proposed HRO on the South Inshore Marine Plan area and the draft South West Inshore Marine Plan area will be very limited and that any effects will be positive. This is because the proposed HRO supports the economic and efficient management of Dart Harbour (including with respect to environmental considerations). A brief summary of compliance is nevertheless set out below.

7.4 Compliance with UK Marine Policy Statement

7.4.1 The UK Marine Policy Statement (MPS) sets out (in section 2.1) that the UK vision for the marine environment is for '*clean, healthy, safe, productive and biologically diverse oceans and seas.*' The core purpose of the proposed HRO is to modernise the Authority's enforcement powers enabling them to keep their enforcement provisions under review and to update, amend and repeal them in a more timely and efficient manner than through byelaws. This will support the Authority in ensuring it meets, both its environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Code. Both of which will support the vision of ensuring that the marine environment in around Dart Harbour is kept '*clean, healthy, safe, productive and biologically diverse.*' The provisions of the proposed HRO also support the following high level objectives contained in the MPS:

- (a) **Achieving a sustainable marine economy:** Marine businesses are acting in a way which respects environmental limits and is socially responsible.
- (b) **Ensuring a strong, healthy and just society:** The coast, seas, oceans and their resources are safe to use.
- (c) **Living within environmental limits:** Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.
- (d) **Promoting Good Governance:** Marine businesses are subject to clear, timely, proportionate and, where appropriate, plan-led regulation.

7.5 Compliance with South Inshore and South Offshore Marine Plan

7.5.1 The South Inshore Marine Plan was published in July 2018 and, as stated above, the River Dart falls within the boundary of the South Inshore Marine Plan area. Through its modernisation of the Authority's statutory powers, enabling the efficient and economic management of Dart Harbour and the activities that take place there, the proposed HRO will support the following objectives contained in the South Marine Plan:

- (a) **Objective 1:** To encourage effective use of space to support existing, and future sustainable economic activity through co-existence, mitigation of conflicts and minimisation of development footprints
- (b) **Objective 2:** To manage **existing**, and aid the provision of new, infrastructure supporting marine and terrestrial activity
- (c) **Objective 11:** To complement and contribute to the achievement of Good Ecological Status or Potential under the Water Framework Directive and Good Environmental Status under the Marine Strategy Framework Directive, with respect to descriptors for marine litter, non-indigenous species and underwater noise.
- (d) **Objective 12:** To safeguard space for, and improve the quality of, the natural marine environment, including to enable continued provision of ecosystem goods and services, particularly in relation to coastal and seabed habitats, fisheries and cumulative impacts on high mobility species.

7.5.2 In addition, the proposed HRO is supported by policy S-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising *‘that Ports and harbours are essential to realise economic and social benefits for the south marine plan areas and the UK. S-PS-1 makes sure proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.’*

7.6 Compliance with draft South West Inshore and South West Offshore Marine Plan

7.6.1 As stated above, until its adoption, the draft South West Inshore and South West Offshore Marine Plan (‘SW Marine Plan’) is a material consideration. Through its modernisation of the Authority’s statutory powers the proposed HRO will support the following objectives contained in the SW Marine Plan:

- (a) **Achieving a sustainable marine economy:** Marine businesses are taking long-term strategic decisions and managing risks effectively. They are competitive and operating efficiently.
- (b) **Ensuring a strong, healthy and just society:** The coast, seas, oceans and their resources are safe to use.
- (c) **Living within environmental limits:** Biodiversity is protected, conserved and where appropriate recovered and loss has been halted.

7.6.2 In addition, the proposed HRO is supported by policy SW-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising *‘that Ports and harbours are essential to realise economic and social benefits for the south west marine plan areas and make sure proposals do not restrict current port and harbour activity or future growth, enabling long-term strategic decisions, and supporting competitive and efficient port and shipping operations.’*

8 CONCLUSION

8.1 In addition to the specific provisions of Schedule 2 to the 1964 Act, paragraph 17 of Schedule 2 provides that a Harbour Revision Order may include provision for:

“Any object which, though not falling within any of the foregoing paragraphs, appears to the [MMO] to be one the achievement of which will conduce to the efficient functioning of the harbour.”

8.2 For the reasons mentioned above, it is considered that to the extent that any provision contained in the HRO does not fall specifically within any other paragraph of Schedule 2, the provisions of the HRO would be conducive to the efficient functioning of Dart Harbour and it is therefore within the scope of the 1964 Act for them to be included in the HRO.

Dated 6th February 2020

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