



Marine
Management
Organisation

Statement in Support of Harbour Revision Order (HRO) Application

Table 1: Application details

1. Date application made to MMO	6 October 2020
2. Name of primary contact	Ashfords LLP
3. Contact details of primary contact	Lara Moore, Ashfords LLP 07736 295582 l.moore@ashfords.co.uk
4. Address of primary contact	Ashfords LLP, Ashford House Grenadier Road Exeter EX1 3LH
5. Name of Statutory Harbour Authority	Saint Mawes Pier and Harbour Company
6. Is this a Works Order?	No
a. Brief description of proposed works	N/A
b. Date when notification of intention was submitted to MMO	N/A
c. Date when EIA screening	N/A

opinion was issued by MMO	
d. If screened in, date when scoping opinion was issued by MMO	N/A
e. If screened in and if an optional ES review was undertaken, date when review was completed by MMO	N/A
7. Non-technical summary – please explain what you are seeking to achieve in this application in no more than 200 words.	The Order modernises the statutory harbour powers applying in relation to Saint Mawes Pier and Harbour by amending the Saint Mawes Pier and Harbour Act 1854, to reduce the required shareholding of a director from 10 shares to 5 shares and to permit up to two directors to be appointed who do not hold shares.
8. Location (coordinates must be provided in WGS84 format if this is a works order)	St Mawes Pier and Harbour (St Mawes, Fal Estuary, Cornwall).
9. State the title of all relevant charts/maps/plans included with application (if appropriate)	N/A
10. State the legislation relevant to the Harbour Authority and included	Saint Mawes Pier and Harbour Act 1854 Saint Mawes Pier and Harbour Order 1934

with this application (if appropriate)	
11. If you have received any pre-application guidance from the MMO in relation to this application please briefly describe this here.	N/A
12. Have you included the required fee for your application?	Sent by BACS with reference HRO/2020/00007

Table 3: Statutory Harbour Authority background

<p>Saint Mawes Pier and Harbour (“the Harbour”) is a statutory harbour run by the Saint Mawes Pier and Harbour Company (a statutory company created under the Saint Mawes Pier and Harbour Act 1854 (‘the 1854 Act’)). The Company, as the Statutory Harbour Authority is governed by its own local legislation collectively known as the Saint Mawes Pier and Harbour Act and Order 1854 to 1934. The Company is responsible for the administration, maintenance and improvement of the Harbour which is more fully described below.</p> <p>Saint Mawes Pier and Harbour is located at St Mawes in Cornwall. It is the first harbour on the Fal Estuary. The Harbour limits are denoted by the points of Carricknath to the South, St Mawes Castle to the North, Polvarth Point in the East and Amsterdam Point in the West.</p> <p>The Harbour has 132 moorings. The majority of which are let on a seasonal basis from 1st April to 31st October. It also has pontoons in the inner harbour available from April to October for visiting yachts’ tenders under 5m in length. A water taxi also operates from the pontoons.</p> <p>In managing the Harbour, the Company strives to observe industry standards set out in Government guidelines. The Company 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 Company’s constitution.</p>

Table 3a: Need and justification for order

The purpose of the Order is to reduce the number of shares a director of the Company needs to hold from 10 to 5. In addition, the amendment of the 1854 Act, allows the Company to appoint up to two directors who do not have a share holding. These amendments are required to ensure that the Company has sufficient flexibility to appoint suitably experienced directors to its Board, thereby enabling the Company to comply, so far as possible with the Ports Good Governance Guidance. Without the amendment, the pool of persons from which the Company can select directors is very small.

Harbours Act 1964

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

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 1:

“Reconstituting the harbour authority by whom the harbour is being improved, maintained or managed or altering their constitution, or establishing, as the harbour authority, in lieu of the existing one, an existing body designated in that behalf or a body constituted for the purpose”.

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.

The application for the Order 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.

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

An explanation of, and the need for, each substantive article in the Order is set out in the table below. Articles 1 and 2 of the Order are not dealt with below since they are ancillary to the substantive provisions of the Order.

Table 2b: Justification for inclusion of provisions

Article in HRO	Summary of Provision	Requirement for provision
3	Amendment of the 1854 Act	<p>This article provides for the amendment of section 8 of the 1854 Act to reduce the number of shares a director of the Company needs to hold from 10 to 5. In addition, the amendment of the 1854 Act, allows the Company to appoint up to two directors who do not have a share holding.</p> <p>The amendment is required to ensure that the Company has sufficient flexibility to appoint suitably experienced directors to its Board, thereby enabling the Company to comply, so far as possible with the Ports Good Governance Guidance. Without the amendment, the pool of persons from which the Company can select directors is very small.</p> <p>This article is authorised by paragraph 1 of Schedule 2 of the Harbours Act 1964:</p> <p><i>“Reconstituting the harbour authority by whom the harbour is being improved, maintained or managed or altering their constitution, or establishing, as the harbour authority, in lieu of the existing one, an existing body designated in that behalf or a body constituted for the purpose”.</i></p>
4 and 5	Saving for Trinity House and Crown Rights	These articles contain standard saving provisions for Trinity House and the Crown.

In addition to the specific provisions of Schedule 2 to the 1964 Act mentioned in tables 3(a) and 2(b) above, paragraph 17 of Schedule 2 of the Act 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.”

For the reasons set out in this table in respect of Article 3 (requirement for provision), it is considered that to the extent that any provision contained in the Order does not fall specifically within any other paragraph of Schedule 2, the provisions of the Order would be conducive to the efficient functioning of Saint Mawes Pier and Harbour and it is therefore within the scope of the 1964 Act for them to be included in the Order.

Table 4: Relevant policies, guidance and plans

Plan, policy or guidance	<i>Demonstration that application is compliant with relevant plan, policy or guidance.</i>
<p>Relevant Marine Plan (or Marine Policy Statement if no plan or draft plan available)</p>	<p>COMPLIANCE WITH UK MARINE POLICY STATEMENT AND DRAFT SOUTH WEST MARINE PLAN</p> <p>Saint Mawes Pier and Harbour is situated within the draft South West Marine Plan inshore area. 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.</p> <p>The proposed Order is a very short, non-works HRO (i.e. it does not authorise a plan or project). Its provisions are focused on modernising the Company’s existing statutory powers to support the efficient and economical operation, maintenance, management and improvement of Saint Mawes Pier and Harbour. This modernisation of powers relates to the Company’s power to appoint directors. The modernisation amends the criteria by which such directors are appointed.</p> <p>As such it is expected that the effects (if any) of the proposed Order on the South West Inshore Marine Plan area will be extremely limited and that any effects will be positive as the proposed Order supports the economic and efficient management of Saint Mawes Pier and Harbour. A brief summary of compliance is nevertheless set out below.</p> <p>Compliance with UK Marine Policy Statement</p> <p>The UK Marine Policy Statement (‘MPS’) sets out (in section 2.1) that the UK vision for the marine environment is for <i>‘clean, healthy, safe, productive and biologically diverse oceans and seas’</i>. The core purpose of the proposed Order is to modernise the Company’s power to appoint directors enabling it to ensure that suitably experienced people sit on the Board of the Company. This will support the Company in ensuring it meets, both its environmental duties under s48A of the Harbours Act 1964 and compliance with the Port Marine Safety Code. Both of which will</p>

	<p>support the vision of ensuring that the marine environment in around Saint Mawes Pier and Harbour is kept ‘<i>clean, healthy, safe, productive and biologically diverse</i>’. The provisions of the proposed Order also support the following high level objectives contained in the MPS:</p> <ul style="list-style-type: none"> (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. <p>Compliance with draft South West Inshore and South West Offshore Marine Plan</p> <p>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 Company’s statutory powers the proposed Order will support the following objectives contained in the SW Marine Plan:</p> <ul style="list-style-type: none"> (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. <p>In addition, the proposed Order is supported by policy SW-PS-1, which expressly supports competitive and efficient port and shipping operations, recognising ‘<i>that Ports and harbours are essential to realise economic and social benefits for the south west marine plan areas and 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.</i>’</p>
<p>Insert other relevant plans/policy/guidance in this section</p>	<p>Ports Good Governance Guidance</p> <p>In particular the following principles from paragraph 2.5:</p> <p>Leadership</p> <ul style="list-style-type: none"> • Where relevant, all port business should be headed by an effective board which is collectively responsible for the long-term success of the business. The board’s role is to provide leadership within a framework of prudent and effective controls which enables risk to be assessed and managed.

	<p>Board effectiveness</p> <ul style="list-style-type: none"> • The board and its committees need to have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively. • New directors should be appointed by a formal, thorough and transparent procedure. The search for, and appointment of, board candidates should be made on merit, against objective criteria and with regard for the benefits of diversity on the board, including gender.
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Table 5: Any other relevant information

<p>No formal public pre-application consultation has been carried out in respect of this application due to the fact that the amendment contained in the Order only affects those persons already holding ten shares. The Company has held an Extraordinary General Meeting at which it passed a Special Resolution to amend the Saint Mawes Pier and Harbour Act 1854 as set out in this Statement of Support.</p>
