

**MARINE MANAGEMENT ORGANISATION
HARBOURS ACT 1964 (AS AMENDED)**

**PROPOSED PORT OF SOUTHAMPTON
HARBOUR REVISION ORDER 202[x]**

**STATEMENT IN SUPPORT OF APPLICATION
FOR ORDER BY:**

ASSOCIATED BRITISH PORTS

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1. INTRODUCTION

- 1.1 This statement relates to the application by Associated British Ports (“ABP”) for the proposed Port of Southampton Harbour Revision Order 202[X] (“the HRO”). ABP is the statutory harbour authority for the Port of Southampton.
- 1.2 The application, made in a letter to the Marine Management Organisation (“the MMO”) dated 2 June 2020 is accompanied by:
- (a) A copy of the draft HRO;
 - (b) This statement;
 - (c) The fee for the application, by BACS, in the sum of £4,000.00; and
 - (d) Copies of the following legislation:
 - sections 52 and 53 of the Harbours, Docks and Piers Clauses Act 1847;
 - section 5 of the Southampton Harbour Act 1887;
 - sections 12 and 13 of the Southampton Harbour Act 1939; and
 - section 16 of the British Transport Docks Act 1972.
- 1.3 The application is for a harbour revision order to be made under the powers conferred on the Secretary of State for Transport by section 14 of the Harbours Act 1964 (“the 1964 Act”) which are delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010 (S.I. 2010/674).
- 1.4 The Order updates the regulatory powers of ABP at the Port of Southampton. It confers additional powers on its harbour master at the port to make directions regulating use of the port and makes new provisions concerning the publication and enforcement of such directions. It also authorises the harbour master to require owners of vessels to identify the master of a vessel using the port. These powers are required to support the effective management of the Port of Southampton, as recommended in the Port Marine Safety Code.

2. ASSOCIATED BRITISH PORTS AND THE PORT OF SOUTHAMPTON

- 2.1 ABP is the statutory harbour authority for the Port of Southampton and a number of other ports around the United Kingdom. It was reconstituted under the Transport Act 1981 as the statutory successor to the British Transport Docks Board which was created in 1962 on the dissolution of the British Transport Commission (in turn established in 1947 following the nationalisation of ports covered by the railway and canal companies). The harbour undertaking inherited from the British Transport Docks Board includes the powers and duties of the Southampton Harbour Board under the Southampton Harbour Acts and Orders 1863 to 1966 which were transferred to the British Transport Docks Board under the Southampton Harbour Reorganisation Scheme 1967.
- 2.2 The Port of Southampton is defined in Section 5 of the Southampton Harbour Act 1887 as that section has effect in accordance with Section 16 of the British Transport Docks Act 1972, but excludes the river Hamble navigation.

3. THE PORT MARINE SAFETY CODE, A GUIDE TO GOOD PRACTICE ON PORT OPERATIONS, PORTS GOOD GOVERNANCE GUIDANCE AND MARINE PLANS

3.1 As the harbour authority for the Port of Southampton, the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) applies to ABP 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.”

3.2 The Code, as well as the supporting document A Guide to Good Practice on Port Marine Operations (2018) (“the Guide”), identify 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”. A similar statement is contained in paragraph 1.9.1 of the Guide. ABP is seeking to modernise its powers of General Directions to enable it to repeal its existing byelaws and instead have a single set of General Directions covering the whole port.

3.3 The Code, the Guide and the Ports Good Governance Guidance (2018), also published by the Department for Transport and applicable to ABP as a statutory harbour authority, place an emphasis on the important role the harbour authority has on the safety of those using the harbour. This is relevant to most of the articles in the Order.

3.4 The Southampton statutory harbour authority sits within the area of the South Marine Plan. That plan contains a number of objectives which are aligned with the purpose of the HRO.

3.5 Objective 1 is to encourage effective use of space to support existing, and future sustainable economic activity through co-existence; objective 3 is to support diversification of activities which improve socio-economic conditions in coastal communities and objective 6 is to maintain and enhance inclusive public access to, and within, the south marine plan areas.

3.6 The geographic limits of the Southampton statutory harbour authority include diverse waterways such as residential reaches of the Rivers Itchen and Test, the commercial, deep water port of Southampton and areas used extensively by a wide range of leisure users such as Southampton Water and parts of the Central Solent. The latter of which are also subject to transits by the largest commercial vessels afloat.

3.7 Ensuring that these many and varied activities are conducted safely and can co-exist in the same water space often involves the harbour master prescribing certain conditions and restrictions on the areas and manner in which craft can be operated. The HRO seeks to update and improve the ability of the harbour master to do this, to reflect the

wide range of marine leisure activities now undertaken across the area and the significant increase in size of commercial traffic since the powers were granted in 1939.

- 3.8 Effective powers of direction are central to allowing the harbour master to make effective use of the waterway, ensuring it remains safe for all those who wish to use it, thus maintaining inclusive public access to this popular and commercially significant body of water.
- 3.9 Objective 4 is to support marine activities that increase or enhance employment opportunities. In addition to members of the public accessing the harbour directly for leisure purposes, within the harbour limits there exist numerous businesses which require access to a safe and efficiently managed waterway to carry out their activities. The requested powers will give the harbour master the ability to more effectively manage the many different types of leisure and commercial vessels to ensure the waterways of Southampton and the Solent remain a viable location for marine businesses to operate and grow.
- 3.10 In conclusion, the purpose of the proposed HRO, to better equip the Southampton harbour master to ensure the safety of existing and future port users, aligns with a number of the objectives of the south marine plan including the protection and development of marine leisure, tourism and commercial maritime activity in a safe and sustainable manner.
- 3.11 The National Policy Statement for Ports has been considered but is not thought to contain policies relevant to the matters covered by the Order because it is not authorising any development.

4. THE HARBOURS ACT 1964

- 4.1 Section 14 of 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.
- 4.2 Section 14(2)(a) 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 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”.

The purposes mentioned in paragraph 3 are:

“(a) improving, maintaining or managing the harbour;

(b) marking or lighting the harbour, raising wrecks therein or otherwise making safe the navigation thereof; or

(c) regulating the carrying on by others of activities relating to the harbour or of activities on harbour land.”

4.3 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. The MMO has been consulted, however, on the proposals.

4.4 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.

5. NEED AND JUSTIFICATION FOR HRO

5.1 The proposed HRO would modernise and extend the powers of ABP considered conducive to the efficient and economical management of the Port. An explanation of, and the need for, each substantive article in the HRO is set out below.

Article 3 Amendment of the 1887 Act to clarify the definition of Port

5.2 This article amends the definition of the Port of Southampton in the Southampton Harbour Act 1887 to clarify that it includes the dock estate, as well as adding a definition of that term in a new section 5A. This definition of Port is then used throughout the HRO.

Article 4 Illustrative plan

5.3 This article introduces an obligation on ABP to hold an illustrative map of the Port at its main office and on its website. This must be updated to reflect any alterations to the extent of the dock estate within the period of 30 days beginning with the day on which the alterations are made.

Article 5 Additional power to make directions

5.4 The power to make directions is currently contained in Section 52 of the Harbours, Docks and Piers Clauses Act 1847 (“the 1847 Act”) as applied by Section 12 of the Southampton Harbour Act 1939 (which authorises directions under Section 52 to be made as general directions). The purposes for which general or special directions may be made are limited to the following:

“For regulating the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour, dock, or pier, and within the prescribed limits, if any, and its position, mooring or unmooring, placing and removing, whilst therein:

For regulating the position in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within or on the harbour, dock or pier:

For regulating the manner in which any vessel entering the harbour or dock or coming to the pier shall be dismantled, as well for the safety of such vessel as for preventing injury to other vessels, and to the harbour, dock, or pier, and the moorings thereof:

For removing unserviceable vessels and other obstructions from the harbour, dock, or pier, and keeping the same clear:

For regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock, or pier shall have during the delivery of her cargo, or after having discharged the same.”

- 5.5 It is not considered that these objectives encompass the full range of purposes that are required for the management of a modern port. In particular directions may be required for the provision of information or risk assessments, regulating the loading or discharge of goods or the amelioration of environmental harm, and to regulate not just the movement of vessels but other activities in the harbour such as events held in the harbour.
- 5.6 While some activities could be addressed through the making of byelaws, making byelaws is a cumbersome and lengthy process which does not allow a timely response to changing circumstances at the port whereas general directions are a more flexible means of regulation.
- 5.7 Article 5 therefore adds to the purposes of section 52 a wider range of purposes for both general and special directions, specifically mentioning some of the objects mentioned above and including a wide general purpose reflecting that included in recent HROs¹ authorising the making of general directions in harbours. These are:
- (a) to require the provision of information or risk assessments from any person using or proposing to use the Port;
 - (b) regulating the loading or discharging of cargo, fuel, water or ships' stores or the embarking or landing of persons;
 - (c) otherwise for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation, the safety of persons or the amelioration of environmental harm in the Port.

Article 5(1)(d) adds a fourth purpose for special directions only which is “requiring persons to comply with a requirement made under a general direction or byelaw or any other enactment of local application relating to the Port”.

For the purpose of the Order, article 2 defines vessels in a broad way which would include for instance personal watercraft. This reflects how vessels have been defined in other recent Harbour Revision Orders.

¹ See e.g. article 4(1) of the Newhaven Harbour Revision Order 2016 or article 4(1) of the Lymington Harbour Revision Order 2014.

- 5.8 These are all purposes for which regulation is required in order for ABP to discharge its duties to operate a modern port. In the absence of a power to make directions for these purposes it would be necessary to promote byelaws and, as explained above, this is not a satisfactory way of dealing with these issues. The power to make regulations for the amelioration of environmental harm in the Port is something that ABP does not have even under its byelaw-making powers and is required in order for ABP to discharge its environmental duties under section 48A of the 1964 Act.
- 5.9 Paragraph (2) of article 5 provides that these directions may apply to a particular vessel or person, i.e. may be a general direction or special direction (the terms are defined in Article 2). In addition to the purposes set out in paragraphs (1)(a) to (c) paragraph (1)(d) provides that a special direction may be made to require compliance with a general direction. These powers will make it easier to enforce a general direction by allowing the harbour master to make a specific direction to a particular vessel.
- 5.10 Article 5 meets the objective in paragraph 4 of Schedule 2 to the 1964 Act of conferring on ABP powers for the purpose of improving, maintaining or managing the harbour, making safe the navigation of the harbour and regulating the carrying on of activities relating to the harbour.

Article 6 Procedure for giving, amending and revoking general directions

- 5.11 Article 6 makes provision for the giving, amending and revoking of general directions and broadly follows the wording in recent HROs. Notice of a proposal must be given in writing to representatives of particular users of the Port and the harbour master is required to consider representations received during consultation. If designated consultees maintain an objection after consultation, there is a procedure for an independent adjudicator to be appointed and ABP must give regard to that adjudicator's report.
- 5.12 This article is in compliance with s.14(3) of the 1964 Act which provides for a Harbour Revision Order to include supplementary provisions.

Article 7 Publication of directions

- 5.13 This article makes provision for the publication of general directions and broadly follows the wording in recent HROs.
- 5.14 This article is in compliance with s.14(3) of the 1964 Act which provides for a Harbour Revision Order to include supplementary provisions.

Article 8 Failure to comply with directions

- 5.15 Articles 8 to 10 generally update the provisions dealing with enforcement of the directions. Article 8 increases the main penalty for breach of a direction to level 4 on the Standard Scale (reflecting modern practice, e.g. section 40C of the 1964 Act in relation to harbour directions under that Act).
- 5.16 This article is in compliance with s.14(3) of the 1964 Act which provides for a Harbour Revision Order to include supplementary provisions.

Article 9 Enforcement of special directions

- 5.17 Article 9 allows the harbour master to put persons on board a vessel in order to ensure compliance with a special direction. This provision will assist in the practical enforcement of the directions. It is a common provision in recent harbour orders (see

e.g. Article 9 of the Newhaven Harbour Revision Order 2016 and the Littlehampton Harbour Revision Order 2015).

- 5.18 In relation to directions being made under the powers contained in article 5, this article meets the objective in paragraph 4 of Schedule 2 to the 1964 Act of conferring on ABP powers for the purpose of improving, maintaining or managing the harbour, making safe the navigation of the harbour and regulating the carrying on of activities relating to the harbour. In relation to directions being made under the existing power to make directions, this article fulfils the objective in paragraph 3 of Schedule 2 to the 1964 Act: varying powers conferred on ABP for those same purposes.
- 5.19 ABP has considered the government guidance on the introduction or amendment of powers of entry in drafting this article.

Article 10 Master's responsibility in relation to directions

- 5.20 Article 10 makes clear that the master retains responsibility for a vessel following the giving of a direction applying to that vessel. As with Article 8, this provision will assist in the practicable enforcement of the directions and is common in recent harbour orders (see e.g. Article 10 of the Newhaven Harbour Revision Order 2016, and the Littlehampton Harbour Revision Order 2015).
- 5.21 This article is in compliance with s.14(3) of the 1964 Act which provides for a Harbour Revision Order to include supplementary provisions.

Article 11 Modification of local legislation

- 5.22 This article makes consequential adjustments in the local legislation applying to the harbour. Section 13 of the Southampton Harbour Act 1939 which provides notification requirements for directions, is replaced by the more modern process included in Article 6 of the Order and so this article provides for its repeal.
- 5.23 This article makes clear that in section 52 of the 1847 Act "vessel" has the same meaning as under this Order: this is to ensure consistency between directions made under the 1847 Act and under this Order.
- 5.24 Section 53 of the 1847 Act, which is incorporated into the Southampton Harbour Act 1863 by section 17 of that Act, and which creates an offence of not complying with directions of the harbour master is replaced by Article 8 of the Order. Therefore this article amends section 17 of the 1863 Act so that section 53 is no longer incorporated.
- 5.25 This article is in compliance with section 14(3) of the 1964 Act which provides for a Harbour Revision Order to include ancillary provisions including modifications of "any statutory provision of local application affecting the harbour to which the order relates".

Article 12 Identity of Master

- 5.26 This provision allows the harbour master to require the owner of a vessel to give details as to who was at any time the master of the vessel. This is to address a particular problem which has arisen in the Port in relation to the prosecution of the master of a vessel for the breach of a direction, or a byelaw, where it has not been possible to identify the master at the time when the offence is committed. It is similar to a provision which has been in force for many years in the Port of London: section 138 of the Port of London Act 1968.
- 5.27 This article meets the objective in paragraph 4 of Schedule 2 to the 1964 Act of conferring on ABP powers to manage the harbour.

Article 13 Notices

- 5.28 This article has been included to ensure that there is a robust procedure in relation to the giving of notices under the HRO.

6. CONCLUSION

For the reasons explained above it is considered that these modifications to the Port of Southampton legislation are desirable in the interests of securing the management of the harbour in an efficient and economical manner and satisfy the requirements of Section 14(2) (b) of the 1964 Act.